

A
DIGEST
OF THE
LAWS OF THE STATE OF ALABAMA:
CONTAINING
ALL THE STATUTES
OF
A PUBLIC AND GENERAL NATURE,
IN FORCE AT THE CLOSE OF THE SESSION
OF
THE GENERAL ASSEMBLY, IN FEBRUARY, 1843.

TO WHICH ARE PREFIXED,
THE DECLARATION OF INDEPENDENCE ;
THE CONSTITUTION OF THE UNITED STATES ;
THE ACT TO ENABLE THE PEOPLE OF ALABAMA TO FORM A CONSTITUTION AND
STATE GOVERNMENT, &c. ;
AND THE CONSTITUTION OF THE STATE OF ALABAMA.

WITH
AN APPENDIX, AND A COPIOUS INDEX.

COMPILED UNDER THE AUTHORITY OF THE GENERAL ASSEMBLY,

BY
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EXPLANATION OF THE REFERENCES.

THE title and date of each law, are indicated in the margin by the year and number which stand opposite to them, in the chronological list of statutes prefixed to the Digest. The particular section is also given, except when it coincides in number with the section of the title which it forms. When the marginal reference is enclosed in brackets, it denotes the incorporation of a passage from some other law, usually of a few words, and in no instance extending beyond the commencement of the next section. The small letters direct to the side of the page; the figures, to the bottom; those in parentheses, are appropriated to the decisions of the supreme court. The explanatory notes are framed with reference to the arbitrary division of each title into sections or paragraphs commencing at unity. When the note alludes to a section, without specifying the title, it will of course be understood to be that under which the note occurs.

DECLARATION OF INDEPENDENCE.

In Congress, July 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES
OF AMERICA.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

Propriety of
the declaration.

We hold these truths to be self-evident:—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain, is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

Unalienable
rights of the
people, &c.

Absolute ty-
ranny the
object of the
king of Great
Britain.

He has refused his assent to laws the most wholesome and necessary for the public good.

Recitation of
injuries and
usurpations
on the part of
the British
crown.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained: and when so suspended he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighbouring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections among us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless In-

dian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They too have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind—enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honour.

JOHN HANCOCK.

NEW HAMPSHIRE.

Josiah Bartlett,
William Whipple,
Matthew Thornton.

MASSACHUSETTS BAY.

Samuel Adams,
John Adams,
Robert Treat Paine,
Elbridge Gerry.

RHODE ISLAND, &c.

Stephen Hopkins,
William Ellery.

CONNECTICUT.

Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott.

NEW YORK.

William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.

NEW JERSEY.

Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

PENNSYLVANIA.

Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

DECLARATION OF INDEPENDENCE.

DELAWARE.

Cæsar Rodney,
George Read,
Thomas McKean.

MARYLAND.

Samuel Chase,
William Paca,
Thomas Stone,
Charles Carroll, of Carrollton.

VIRGINIA.

George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, Jr.
Francis Lightfoot Lee,
Carter Braxton.

NORTH CAROLINA.

William Hooper,
Joseph Hewes,
John Penn.

SOUTH CAROLINA.

Edward Rutledge,
Thomas Heyward, Jr.
Thomas Lynch, Jr.
Arthur Middleton.

GEORGIA.

Button Gwinnett,
Lyman Hall,
George Walton.

CONSTITUTION OF THE UNITED STATES.

WE, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE 1.—SECTION 1.

1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives. Legislative powers.

SECTION 2.

1. The house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. Members of house of representatives, how chosen.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen. Qualification of members of house of representatives.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of *New Hampshire* shall be entitled to choose three; *Massachusetts* eight; *Rhode Island* and *Providence Plantations* one; *Connecticut* five; *New York* six; *New Jersey* four; *Pennsylvania* eight; *Delaware* one; *Maryland* six; *Virginia* ten; *North Carolina* five; *South Carolina* five; and *Georgia* three. Apportionment of representatives.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies. Vacancies, how filled.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment. H. of rep. to choose their officers—power of impeachment.

SECTION 3.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote. Senate, how chosen.

Senators
classified.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

Senators'
qualifica-
tion.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

Vice presi-
dent.

4. The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

Senate to
choose offi-
cers.

5. The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice president, or when he shall exercise the office of president of the United States.

Try impeach-
ments.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment on
impeach-
ment.

7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit, under the United States; but the party convicted, shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION 4.

Elections
how held.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Congress as-
semble annu-
ally.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5.

Elections,
how judged.
Quorum in
senate and
house of rep.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Rules.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

Journals of
each house.
Yeas and
nays.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment, require secrecy; and the yeas and nays of the members of either

house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Adjournment.

SECTION 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Compensation.

Privileges.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Members not eligible to office.

SECTION 7.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

Revenue bills.

2. Every bill, which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house, respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Passing bills.

Veto.

3. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment,) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

Resolutions, &c. how passed.

SECTION 8.

Powers of congress.	The congress shall have power—
Taxes.	1. To lay and collect taxes, duties, imposts and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States:
Loans.	2. To borrow money on the credit of the United States:
Commerce.	3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:
Naturalization.	4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:
Bankruptcies.	5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:
Coin, weights and measures.	6. To provide for the punishment of counterfeiting the securities and current coin of the United States:
Punish counterfeiting.	7. To establish post-offices and post roads:
Post offices, &c.	8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:
Science and arts.	9. To constitute tribunals inferior to the supreme court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:
Courts. Punish piracies, &c.	10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:
Declare war.	11. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:
Raise armies	12. To provide and maintain a navy:
Navy.	13. To make rules for the government and regulation of the land and naval forces:
Military law.	14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions:
Call out the militia.	15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress:
Organize militia.	16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings:—and,
Exclusive jurisdiction.	17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.
Make all laws necessary, &c.	

SECTION 9.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight,

Importation of slaves after 1808.

but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it. Habeas corpus.

3. No bill of attainder, or *ex post facto* law, shall be passed. Attainder.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken. Tax.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to or from one state, be obliged to enter, clear, or pay duties in another. No exportation duty.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time. Money, how drawn.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state. Titles of nobility not allowed.

SECTION 10.

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility. Limitations of the powers of the individual states.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.—SECTION 1.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows: Executive power.

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector. Manner of electing the president and vice president. But see amendments, article 12.

3. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabi-

tant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then, from the five highest on the list, the said house shall, in like manner, choose the president. But in choosing the president, the vote shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice-president.

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Who may be
elected pre-
sident.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president, neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In what cas-
es the vice
president to
act as presi-
dent.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

President's
compensa-
tion.

7. The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

His oath.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

SECTION 2.

President U.
States' pow-
ers.

1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive

departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur: and he shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers, and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION 3.

1. He shall, from time to time, give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and, in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION 4.

1. The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.—SECTION 1.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION 2.

1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority: to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more

states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

Whether original or appellate.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make.

Trials by jury.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed, but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION 3.

Treason.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Attainder.

2. The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.—SECTION 1.

Acts and records of the states.

1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.

SECTION 2.

Citizens' privileges.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Fugitives from justice.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

From service.

3. No person held to service or labour in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour; but shall be delivered up on claim of the party to whom such service or labour may be due.

SECTION 3.

New states admitted.

1. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of

any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

2. The congress shall have power to dispose of, and make all need-
ful rules and regulations respecting the territory or other property be-
longing to the United States; and nothing in this constitution shall be
so construed as to prejudice any claims of the United States, or of any
particular state.

Congress to
have power
over territo-
ry, &c.
Claims of the
states, &c.
not to be pre-
judiced.

SECTION 4.

1. The United States shall guarantee to every state in this union
a republican form of government, and shall protect each of them
against invasion; and, on application of the legislature, or of the ex-
ecutive, (when the legislature cannot be convened,) against domestic
violence.

Republican
form.

ARTICLE V.

1. The congress, whenever two-thirds of both houses shall deem
it necessary, shall propose amendments to this constitution; or, on
the application of the legislatures of two-thirds of the several states,
shall call a convention for proposing amendments, which, in either
case, shall be valid to all intents and purposes, as part of this con-
stitution, when ratified by the legislatures of three-fourths of the se-
veral states, or by conventions in three-fourths thereof, as the one or
the other mode of ratification may be proposed by the congress; pro-
vided, that no amendment which may be made prior to the year one
thousand eight hundred and eight, shall in any manner affect the first
and fourth clauses in the ninth section of the first article: and that no
state, without its consent, shall be deprived of its equal suffrage in the
senate.

Amend-
ments, how
attained.

ARTICLE VI.

1. All debts contracted and engagements entered into, before the
adoption of this constitution, shall be as valid against the United
States under this constitution, as under the confederation.

Prior debts
of govern-
ment.

2. This constitution, and the laws of the United States which
shall be made in pursuance thereof, and all treaties made, or which
shall be made, under the authority of the United States, shall be the
supreme law of the land; and the judges in every state shall be bound
thereby; any thing in the constitution or laws of any state to the con-
trary notwithstanding.

Constitution
and treaties,
are the su-
preme law.

3. The senators and representatives before mentioned, and the
members of the several state legislatures, and all executive and judi-
cial officers, both of the United States and of the several states, shall
be bound by oath or affirmation to support this constitution; but no
religious test shall ever be required as a qualification to any office or
public trust under the United States.

Oath to the
constitution.

No religious
test.

ARTICLE VII.

1. The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President and Deputy from Virginia.

NEW HAMPSHIRE.

John Langdon,
Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorman,
Rufus King.

CONNECTICUT.

William S. Johnson,
Roger Sherman.

NEW YORK.

Alexander Hamilton.

NEW JERSEY.

William Livingston,
David Brearly,
William Patterson,
Jonathan Dayton.

PENNSYLVANIA.

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersol,
James Wilson,
Gouverneur Morris

DELAWARE.

George Read,
Gunning Bedford, jr.
John Dickinson,
Richard Bassett,
Jacob Broom.

MARYLAND.

James McHenry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.

VIRGINIA.

John Blair,
James Madison, jun.

NORTH CAROLINA.

William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

SOUTH CAROLINA.

John Rutledge,
Charles C. Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abraham Baldwin.

Attest,

WILLIAM JACKSON, Secretary.

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.*

*March 4th,
1793

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. Rights of conscience, freedom of the press, &c.

ARTICLE II.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. Of the right to bear arms.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law. Of quartering troops.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. Of searches, seizures, and warrants.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. Of indictments, punishments, &c.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district Of trial in criminal ca.

ees, and the
rights of a
defendant.

wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defence.

ARTICLE VII.

Of trial in
civil cases.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Of bail and
fines.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

Of rights re-
served.

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

Powers not
delegated.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

*Dec. 2, 1793

ARTICLE XI.*

Of the judi-
cial power.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

*Oct. 17,
1802.

ARTICLE XII.*

Manner of
electing the
president
and vice
president.

1. The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves: They shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each; which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number

of votes for president shall be the president, if such number be a majority of the whole number of electors appointed ; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote ; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed ; and if no person have a majority, then, from the two highest numbers on the list, the senate shall choose the vice-president : a quorum for the purpose shall consist of two-thirds of the whole number of senators ; and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

AN ACT

To enable the people of the Alabama Territory to form a Constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States.

[Passed March 2, 1819.]

The inhabitants of Alabama authorized to form a constitution and state government. To be admitted into the Union.

Boundaries of the state.

Including islands within six leagues of the shore.

The line of demarkation between Mississippi and the state to be formed, to be run and cut by the surveyors of lands south of Tennessee and of Alabama: and if it should appear, &c.

Qualified voters to choose representatives to form a constitution.

Appointment of representatives.

Madison.
Monroe.
Blount.
Limestone.
Shelby.
Montgomery
Washington
Tuskaloosa.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the inhabitants of the territory of Alabama be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper; and that the said territory, when formed into a state, shall be admitted into the Union, upon the same footing with the original states, in all respects whatsoever.

SEC. 2. *And be it further enacted,* That the said state shall consist of all the territory included within the following boundaries, to wit: Beginning at the point where the thirty-first degree of north latitude intersects the Perdido river; thence, east, to the western boundary line of the state of Georgia; thence, along said line, to the southern boundary line of the state of Tennessee; thence, west, along said boundary line, to the Tennessee river; thence, up the same, to the mouth of Bear creek; thence, by a direct line, to the north-west corner of Washington county; thence, due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence, up the same, to the beginning.

SEC. 3. *And be it further enacted,* That it shall be the duty of the surveyor of the lands of the United States south of the state of Tennessee, and the surveyor of the public lands in the Alabama territory, to run and cut out the line of demarkation, between the state of Mississippi and the state to be formed of the Alabama territory; and if it should appear to said surveyors, that so much of said line designated in the preceding section, running due south, from the north-west corner of Washington county to the Gulf of Mexico, will encroach on the counties of Wayne, Green, or Jackson, in said state of Mississippi, then the same shall be so altered as to run in a direct line from the north-west corner of Washington county to a point on the Gulf of Mexico, ten miles east of the mouth of the river Pascagoula.

SEC. 4. *And be it further enacted,* That all white male citizens of the United States, who shall have arrived at the age of twenty-one years, and have resided in said territory three months previous to the day of election, and all persons having, in other respects, the legal qualifications to vote for representatives in the General Assembly of the said territory, be, and they are hereby authorized to choose representatives to form a constitution, who shall be appointed among the several counties as follows:

From the county of Madison, eight representatives:
From the county of Monroe, four representatives:
From the county of Blount, three representatives:
From the county of Limestone, three representatives:
From the county of Shelby, two representatives:
From the county of Montgomery, two representatives:
From the county of Washington, two representatives:
From the county of Tuskaloosa, two representatives:

From the county of Lawrence, two representatives :	Lawrence.
From the county of Franklin, two representatives :	Franklin.
From the county of Cotaco, two representatives :	Cotaco.
From the county of Clarke, two representatives :	Clarke.
From the county of Baldwin, one representative :	Baldwin.
From the county of Cahawba, one representative :	Cahawba.
From the county of Conecuh, one representative :	Conecuh.
From the county of Dallas, one representative :	Dallas.
From the county of Marengo, one representative :	Marengo.
From the county of Marion, one representative :	Marion.
From the county of Mobile, one representative :	Mobile.
From the county of Lauderdale, one representative :	Lauderdale.
From the county of St. Clair, one representative :	St. Clair.
From the county of Autauga, one representative.	Autauga.

And the election for representatives aforesaid shall be holden on the first Monday and Tuesday in May next, throughout the several counties in the said territory, and shall be conducted in the same manner, and under the same regulations as prescribed by the laws of the said territory, regulating elections therein for the members of the house of representatives.

SEC. 5. *And be it further enacted*, That the members of the convention thus duly elected, be, and they are hereby authorized to meet, at the town of Huntsville, on the first Monday in July next; which convention when met, shall first determine, by a majority of the whole number elected, whether it be, or be not, expedient, at that time, to form a constitution and state government for the people in the said territory: and if it be determined to be expedient, the convention shall be, and hereby are, authorized to form a constitution and state government: *Provided*, that the same, when formed, shall be republican, and not repugnant to the principles of the ordinance of the thirteenth of July, one thousand seven hundred and eighty-seven, between the people and states of the territory north-west of the river Ohio, so far as the same has been extended to the said territory, by the articles of agreement between the United States and the state of Georgia, or of the constitution of the United States.

SEC. 6. *And be it further enacted*, That the following propositions be, and the same are hereby offered to the convention of the said territory of Alabama, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States:

First. That the section numbered sixteen in every township, and when such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such townships for the use of schools.

Second. That all salt springs within the said territory, and the lands reserved for the use of the same, together with such other lands as may, by the President of the United States, be deemed necessary and proper for working the said salt-springs, not exceeding in the whole the quantity contained in thirty-six entire sections, shall be granted to the said state, for the use of the people of the said state, the same to be used, under such terms, conditions, and regulations, as the legislature of the said state shall direct: *Provided*, the said legislature shall never sell nor lease the same for a longer term than ten years at any one time.

Third. That five per cent. of the net proceeds of the lands lying within the said territory, and which shall be sold by congress, from and after the first day of September, in the year one thousand eight

Lawrence.
Franklin.
Cotaco.
Clarke.
Baldwin.
Cahawba.
Conecuh.
Dallas.
Marengo.
Marion.
Mobile.
Lauderdale.
St. Clair.
Autauga.

Election to be holden on the first Monday and Tuesday in May, 1819, &c.

Members of the convention to meet at Huntsville on the first Monday in July, 1819, and to determine, &c.

Convention authorized to form a constitution, &c. *Provided*: the government to be republican and not repugnant to the ordinance of 13th July 1787, so far, &c.

Propositions, offered to the convention, to be obligatory upon if accepted.

1. Sec. No. 16 in every township for the use of schools.

2. Salt springs and lands for working them granted to the state, for the use of the people.

Provided: the legislature not to sell nor lease for more than ten years.
3. Five per cent. of net proceeds of land

sold after 1st
Sept. 1819, to
be reserved
for making
public roads,
canals, &c.

hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for making public roads, canals, and improving the navigation of rivers, of which three fifths shall be applied to those objects within the said state, under the direction of the legislature thereof; and two fifths to the making of a road or roads leading to the said state, under the direction of congress.

4. An entire
township for
seminary of
learning, to-
gether with
the one here-
before re-
served.

The secreta-
ry of the
treasury may
reserve them
in small
tracts.

Proviso: no
tract less
than two
sections.

Proviso: ir-
revocable or-
dinance dis-
claiming
right to
waste lands.

Waste lands
at the sole
disposal of
the United
States.

Tract of land
sold by the
U. States to
be exempt
from taxes
for 5 years.

Lands of
non-resident
citizens not
to be taxed
higher, &c.

No tax on U.
States' lands.
Water
courses.

1620 acres of
land for a
seat of go-
vernment, in
lieu, &c.

The state en-
titled to one
representa-
tive in con-
gress until
the next ge-
neral census.
A true and
attested copy
of the consti-
tution to be
transmitted
to congress,
&c.

Fourth. That thirty-six sections, or one entire township, to be designated by the Secretary of the Treasury, under the direction of the President of the United States, together with the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said state to be appropriated solely to the use of such seminary by the said legislature.

And the Secretary of the Treasury, under the direction as aforesaid, may reserve the seventy-two sections, or two townships, hereby set apart for the support of a seminary of learning, in small tracts: *Provided*, that no tract shall consist of less than two sections: *And provided always*, that the said convention shall provide, by an ordinance irrevocable without the consent of the United States, that the people inhabiting the said territory, do agree and declare that they forever disclaim all right and title to the waste or unappropriated lands lying within the said territory; and that the same shall be and remain at the sole and entire disposition of the United States; and, moreover, that each and every tract of land sold by the United States, after the first day of September, in the year one thousand eight hundred and nineteen, shall be and remain exempt from any tax laid by the order, or under the authority, of the state, whether for state, county, town-ship, parish, or any other purpose whatever, for the term of five years, from and after the respective days of the sales thereof; and that the lands belonging to citizens of the United States, residing without the said state, shall never be taxed higher than the lands be- longing to persons residing therein; and that no tax shall be imposed on lands, the property of the United States; and that all navigable waters within the said state shall forever remain public highways, free to the citizens of said state and of the United States, without any tax, duty, impost, or toll therefor, imposed by the said state.

SEC. 7. *And be it further enacted*, That in lieu of a section of land, provided to be reserved for the seat of government of the said terri- tory, by an act, entitled "An Act respecting the surveying and sale of the Public Lands in the Alabama Territory," there be granted to the said state, for the seat of the government thereof, a tract of land con- taining sixteen hundred and twenty acres, and consisting of sundry fractions and a quarter section, in sections thirty-one and thirty-two, in township sixteen, and range ten, and in sections five and six, in township fifteen, and range ten, and in sections twenty-nine and thirty, in the same township and range, lying on both sides of the Alabama and Cahawba rivers, and including the mouth of the river Cahawba, and which heretofore has been reserved from public sale, by order of the President of the United States.

SEC. 8. *And be it further enacted*, That, until the next general census shall be taken, the said state shall be entitled to one representa- tive in the house of representatives of the United States.

SEC. 9. *And be it further enacted*, That, in case the said conven- tion shall form a constitution and state government for the people of the territory of Alabama, the said convention, as soon thereafter as may be, shall cause a true and attested copy of such constitution or frame of government as shall be formed or provided, to be transmitted to congress for its approbation.

CONSTITUTION OF THE STATE OF ALABAMA.

WE, the people of the Alabama Territory, having the right of admission into the general government, as a member of the Union, consistent with the constitution and laws of the United States, by our representatives, assembled in convention at the town of Huntsville, on Monday, the fifth day of July, one thousand eight hundred and nineteen, in pursuance of an act of congress, entitled "An Act to enable the people of the Alabama Territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states;" in order to establish justice, ensure tranquility, provide for the common defence, promote the general welfare, and secure to ourselves and our posterity the rights of life, liberty, and property, do ordain and establish the following constitution, or form of government; and do mutually agree with each other to form ourselves into a free and independent state, by the name of "The State of Alabama." And we do hereby recognize, confirm, and establish the boundaries assigned to said state by the act of congress aforesaid, "to wit: beginning at the point where the thirty-first degree of north latitude intersects the Perdido river, thence, east, to the western boundary line of the state of Georgia; thence, along said line, to the southern boundary line of the state of Tennessee; thence, west, along said boundary line, to the Tennessee river; thence, up the same, to the mouth of Bear creek; thence, by a direct line, to the north-west corner of Washington county; thence, due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence, up the same, to the beginning"—subject to such alteration as is provided in the third section of said act of congress, and subject to such enlargement as may be made by law, in consequence of any cession of territory by the United States, or either of them.

Preamble.

ARTICLE I.

Declaration of Rights.

That the general, great, and essential principles of liberty and free government may be recognized and established, we declare:

Sec. 1. That all freemen, when they form a social compact, are equal in rights; and that no man or set of men are entitled to exclusive, separate public emoluments or privileges, but in consideration of public services.

All freemen
are equal.

Sec. 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit: and, therefore, they have at all times an unalienable and indefeasible right to alter, reform, or abolish their form of government, in such manner as they may think expedient.

Political
power in the
people.

Sec. 3. No person within this state shall, upon any pretence, be deprived of the inestimable privilege of worshipping God in the manner most agreeable to his own conscience; nor be compelled to attend

Rights of
conscience.

any place of worship; nor shall any one ever be obliged to pay any tithes, taxes, or other rate, for the building or repairing any place of worship, or for the maintenance of any minister or ministry.

not to be in-
terfered
with.

Sec. 4. No human authority ought, in any case whatever, to control or interfere with the rights of conscience.

No person
molested.

Sec. 5. No person shall be hurt, molested, or restrained, in his religious profession, sentiments, or persuasions, provided he does not disturb others in their religious worship.

Civil rights
not affected
by religious
belief.

Sec. 6. The civil rights, privileges, or capacities of any citizen, shall in no way be diminished, or enlarged, on account of his religious principles.

No establish-
ed religion or
religious test.

Sec. 7. There shall be no establishment of religion by law; no preference shall ever be given by law to any religious sect, society, denomination, or mode of worship: and no religious test shall ever be required as a qualification to any office or public trust under this state.

Freedom of
speech, &c.

Sec. 8. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

Searches.

Sec. 9. The people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures or searches; and no warrant to search any place, or to seize any person or thing, shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

Rights of ac-
cused in cri-
minal cases.

Sec. 10. In all criminal prosecutions, the accused has a right to be heard by himself and counsel; to demand the nature and cause of the accusation, and have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and, in all prosecutions, by indictment or information, a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed: he shall not be compelled to give evidence against himself, nor shall he be deprived of his life, liberty, or property, but by due course of law.

No person
accused, &c.
except by
law.

Sec. 11. No person shall be accused, arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished, but in virtue of a law, established and promulgated prior to the offence, and legally applied.

Indictable of-
fences, how
proceeded a-
gainst.

Sec. 12. No person shall, for any indictable offence, be proceeded against criminally, by information; except in cases arising in the land and naval forces, or the militia when in actual service, or, by leave of the court, for oppression or misdemeanor in office.

No person
twice tried
for same of-
fence.

Sec. 13. No person shall, for the same offence, be twice put in jeopardy of life or limb; nor shall any person's property be taken or applied to public use, unless just compensation be made therefor.

Courts to be
open, &c.

Sec. 14. All courts shall be open, and every person, for an injury done him, in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay.

Laws not
suspended
but by gene-
ral assembly.
Of bail and
fines.

Sec. 15. No power of suspending laws shall be exercised, except by the general assembly, or its authority.

Bailable of-
fences.

Sec. 16. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Sec. 17. All persons shall, before conviction, be bailable by sufficient securities, except for capital offences, when the proof is evident, or the presumption great: and the privilege of the writ of

"*habeas corpus*" shall not be suspended, unless when, in cases of rebellion, or invasion, the public safety may require it.

Sec. 18. The person of a debtor, where there is not strong presumption of fraud, shall not be detained in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law. Debtor's when discharged.

Sec. 19. No *ex post facto* law, nor law impairing the obligation of contracts, shall be made. No ex post facto laws.

Sec. 20. No person shall be attainted of treason or felony by the general assembly. No attainder shall work corruption of blood, nor forfeiture of estate. No attainds.

Sec. 21. The estates of suicides shall descend or vest as in cases of natural death; if any person shall be killed by casualty, there shall be no forfeiture by reason thereof. No forfeiture from suicide.

Sec. 22. The citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance. Assembly of citizens.

Sec. 23. Every citizen has a right to bear arms in defence of himself and the state. May bear arms.

Sec. 24. No standing army shall be kept up without the consent of the general assembly; and, in that case, no appropriation of money for its support shall be for a longer term than one year; and the military shall, in all cases, and at all times, be in strict subordination to the civil power. Standing army, &c.

Sec. 25. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law. Quartering troops.

Sec. 26. No title of nobility, or hereditary distinction, privilege, honour, or emolument, shall ever be granted or conferred in this state; nor shall any office be created, the appointment of which shall be for a longer term than during good behaviour. No titles of nobility.

Sec. 27. Emigration from this state shall not be prohibited, nor shall any citizen be exiled. Emigration.

Sec. 28. The right of trial by jury shall remain inviolate. Trial by jury.

Sec. 29. No person shall be debarred from prosecuting or defending any civil cause, for or against him or herself, before any tribunal in this state, by him or herself, or counsel. Right of prosecuting, &c.

Sec. 30. This enumeration of certain rights shall not be construed to deny or disparage others retained by the people: and to guard against any encroachments on the rights herein retained, or any transgression of any of the high powers herein delegated, we declare, that every thing in this article is excepted out of the general powers of government, and shall for ever remain inviolate; and that all laws contrary thereto, or to the following provisions, shall be void. Enumeration of rights.

ARTICLE II.

Distribution of Powers.

Sec. 1. The powers of the government of the state of Alabama shall be divided into three distinct departments; and each of them confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive, to another; and those which are judicial, to another. Three distinct departments.

Persons be-
longing to
one not to in-
terfere with
the others.

Sec. 2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE III.

Legislative Department.

Two branch-
es.

Style of laws

Sec. 1. The legislative power of this state shall be vested in two distinct branches: the one to be styled the senate, the other the house of representatives, and both together "The General Assembly of the State of Alabama;" and the style of their laws shall be, "Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened."

Members,
how chosen.

Sec. 2. The members of the house of representatives shall be chosen by the qualified electors, and shall serve for the term of one year, from the day of the commencement of the general election, and no longer.

Election,
when held.

Sec. 3. The representatives shall be chosen every year, on the first Monday and the day following in August, until otherwise directed by law.

Qualifica-
tion of mem-
bers.

Sec. 4. No person shall be a representative, unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof a resident of the county, city, or town, for which he shall be chosen, and shall have attained the age of twenty-one years.

Of electors.

Sec. 5. Every white male person of the age of twenty-one years, or upwards, who shall be a citizen of the United States, and shall have resided in this state one year next preceding an election, and the last three months within the county, city, or town, in which he offers to vote, shall be deemed a qualified elector: provided, that no soldier, seaman, or marine, in the regular army or navy of the United States, shall be entitled to vote at any election in this state; and provided, also, that no elector shall be entitled to vote except in the county, city, or town (entitled to separate representation) in which he may reside at the time of the election.

Electors' pri-
vileges.

Sec. 6. Electors shall, in all cases, except in those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from the same.

Elections by
ballot.

Sec. 7. In all elections by the people, the electors shall vote by ballot, until the general assembly shall otherwise direct.

Elections,
where held.

Sec. 8. Elections for representatives for the several counties shall be held at the place of holding their respective courts, and at such other places as may be prescribed by law: provided, that when it shall appear to the general assembly that any city or town shall have a number of white inhabitants equal to the ratio then fixed, such city or town shall have a separate representation, according to the number of white inhabitants therein; which shall be retained so long as such city or town shall contain a number of white inhabitants equal to the ratio which may from time to time be fixed by law; and thereafter, and during the existence of the right of separate representation, in such city or town, elections for the county in which such city or town (entitled to such separate representation) is situated, shall not be held in such city or town; but it is understood, and hereby declared, that

Separate re-
presentation
of cities or
towns.

no city or town shall be entitled to separate representation, unless the number of white inhabitants in the county in which such city or town is situated, residing out of the limits of said city or town, be equal to the existing ratio; or unless the residuum or fraction of such city or town shall, when added to the white inhabitants of the county residing out of the limits of said city or town, be equal to the ratio fixed by law for one representative; and provided, that if the residuum or fraction of any city or town, entitled to separate representation, shall, when added to the residuum of the county in which it may lie, be equal to the ratio fixed by law for one representative, then the aforesaid county, city, or town, having the largest residuum, shall be entitled to such representation: and provided also, that when there are two or more counties adjoining, which have residuums or fractions over and above the ratio then fixed by law, if said residuums or fractions, when added together, will amount to such ratio, in that case one representative shall be added to that county having the largest residuum.

Residuum,
how disposed
of.

Proviso.

Sec. 9. The general assembly shall, at their first meeting, and in the years one thousand eight hundred and twenty, one thousand eight hundred and twenty-three, one thousand eight hundred and twenty-six, and every six years thereafter, cause an enumeration to be made of all the inhabitants of the state, and the whole number of the representatives shall, at the first session held after making every such enumeration, be fixed by the general assembly, and apportioned among the several counties, cities or towns, entitled to separate representation, according to their respective numbers of white inhabitants; and the said apportionment, when made, shall not be subject to alteration, until after the next census shall be taken. The house of representatives shall not consist of less than forty-four, nor more than sixty members, until the number of white inhabitants shall be one hundred thousand; and after that event, the whole number of representatives shall never be less than sixty, nor more than one hundred: provided, however, that each county shall be entitled to at least one representative.

Enumera-
tion, when
and how ta-
ken.

Apportion-
ment of re-
presentation.

General As-
sembly.

Sec. 10. The general assembly shall, at the first session after making every such enumeration, fix by law the whole number of senators, and shall divide the state into the same number of districts, as nearly equal, in the number of white inhabitants, as may be, each of which districts shall be entitled to one senator and no more: provided, that the whole number of senators shall never be less than one-fourth, nor more than one-third, of the whole number of representatives.

Senate ap-
portioned.

Sec. 11. When a senatorial district shall be composed of two or more counties, the counties, of which such district consists, shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a district.

Senatorial
districts.

Sec. 12. Senators shall be chosen by the qualified electors, for the term of three years, at the same time, in the same manner, and at the same places, where they may vote for members of the house of representatives; and no person shall be a senator, unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and shall have attained to the age of twenty-seven years.

Senators,
how chosen.
Term of ser-
vice.

Qualifica-
tions.

Sec. 13. The senators chosen according to the apportionment under the census ordered to be taken in one thousand eight hundred and twenty-six, when convened, shall be divided by lot into three classes, as nearly equal as may be. The seats of the senators of the first

Classifica-
tion of sena-
tors.

class shall be vacated at the expiration of the first year, those of the second class at the expiration of the second year, and those of the third class at the expiration of the third year, so that one-third may be annually chosen thereafter, and a rotation thereby kept up perpetually. Such mode of classifying new additional senators shall be observed as will, as nearly as possible, preserve an equality of members in each class.

House of representatives to choose a speaker. Senate to choose a president. To judge &c. Contested elections. Quorum. Absent members.

Sec. 14. The house of representatives, when assembled, shall choose a speaker, and its other officers; and the senate shall, annually, choose a president, and its other officers; each house shall judge of the qualifications, elections, and returns, of its own members: but a contested election shall be determined in such manner as shall be directed by law.

Sec. 15. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Rules.

Sec. 16. Each house may determine the rules of its own proceedings, punish members for disorderly behaviour, and, with the consent of two-thirds, expel a member; but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state.

Punishment for contempt.

Sec. 17. Each house, during the session, may punish, by imprisonment, any person, not a member, for disrespectful or disorderly behaviour in its presence, or for obstructing any of its proceedings: provided, that such imprisonment shall not, at any one time, exceed forty-eight hours.

Journal of proceedings.

Sec. 18. Each house shall keep a journal of its proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of any two members present, be entered on the journals. Any member of either house shall have liberty to dissent

Yeas and nays.

Protest.

from, or protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons of his dissent entered on the journals.

Privileged from arrest, &c.

Sec. 19. Senators and representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest, during the session of the general assembly, and in going to and returning from the same; allowing one day for every twenty miles such member may reside from the place at which the general assembly is convened; nor shall any member be liable to answer for any thing spoken in debate in either house, in any court or place elsewhere.

Vacancies, how filled.

Sec. 20. When vacancies happen in either house, the governor, or the person exercising the powers of the governor, shall issue writs of election to fill such vacancies.

Doors kept open, except when. Adjournment by consent.

Sec. 21. The doors of each house shall be open, except on such occasions, as, in the opinion of the house, may require secrecy.

Sec. 22. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Bills, how to originate, &c.

Sec. 23. Bills may originate in either house, and be amended, altered, or rejected, by the other; but no bill shall have the force of a law, until on three several days it be read in each house, and free discussion be allowed thereon, unless, in case of urgency, four-fifths of the house in which the bill shall be depending may deem it expe-

dient to dispense with this rule: and every bill, having passed both houses, shall be signed by the speaker and president of their respective houses: provided, that all bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject them as other bills.

Sec. 24. Each member of the general assembly shall receive from the public treasury such compensation for his services as may be fixed by law; but no increase of compensation shall take effect during the session at which such increase shall have been made. Compensation of members.

Sec. 25. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which shall have been increased, during such term; except such offices as may be filled by elections by the people. Members not eligible to office.

Sec. 26. No person holding any lucrative office under the United States, (the office of post-master excepted,) this state, or any other power, shall be eligible to the general assembly: provided, that offices in the militia to which there is attached no annual salary, or the office of justice of the peace, or that of the quorum, or county court, while it has no salary, shall not be deemed lucrative. What offices disqualify persons from being members.

Sec. 27. No person, who may hereafter be a collector or holder of public moneys, shall have a seat in either house of the general assembly, or be eligible to any office of trust or profit under this state, until he shall have accounted for, and paid into the treasury, all sums for which he may be accountable. Public defaulters disqualified.

Sec. 28. The first election for senators and representatives shall be general throughout the state; and shall be held on the third Monday and Tuesday in September next. First election, when held.

Sec. 29. The first session of the general assembly shall commence on the fourth Monday in October next, and be held at the town of Huntsville, and all subsequent sessions at the town of Cahawba, until the end of the first session of the general assembly to be held in the year one thousand eight hundred and twenty-five; during that session the general assembly shall have power to designate by law (to which the executive concurrence shall not be required) the permanent seat of government, which shall not thereafter be changed: provided, however, that unless such designation be then made by law, the government shall continue permanently at the town of Cahawba; and provided also, that the general assembly shall make no appropriations, previous to the year one thousand eight hundred and twenty five, for the building of any other state-house than that now provided for by law. First session when and where held. Subsequent session. Removal of seat of government.

ARTICLE IV.

Executive Department.

Sec. 1. The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Alabama. Vested in a governor.

Sec. 2. The governor shall be elected by the qualified electors at the time and places when they shall respectively vote for representatives. Governor, how elected.

Sec. 3. The returns of every election for governor shall be sealed up, and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall, during the first week of the session, open and publish them in presence of both houses of the gen- Returns, how made. Votes, how counted.

- Plurality to elect. Tie. eral assembly. The person having the highest number of votes shall be governor, but if two or more shall be equal and highest in votes, one of them shall be chosen governor by the joint vote of both houses.
- Contested elections. Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law.
- Term of service. Sec. 4. The governor shall hold his office for the term of two years from the time of his installation, and until his successor shall be duly qualified, but shall not be eligible for more than four years in any term of six years; he shall be at least thirty years of age, shall be a native citizen of the United States, and shall have resided in this state at least four years next preceding the day of his election.
- Qualifications. Sec. 5. He shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected.
- Compensation. Sec. 6. He shall be commander-in-chief of the army and navy of this state, and of the militia thereof, except when they shall be called into the service of the United States. And when acting in the service of the United States, the general assembly shall fix his rank.
- Commander of militia, &c. Sec. 7. He may require information in writing from the officers of the executive department, on any subject relating to the duties of their respective offices.
- May require information of executive officers. Sec. 8. He may, by proclamation, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; in case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next annual meeting of the general assembly.
- Convening and adjourning general assembly. Sec. 9. He shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient.
- Give information to general assembly. Sec. 10. He shall take care that the laws be faithfully executed.
- Execution of laws. Sec. 11. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In cases of treason he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons; and he may, in the recess of the senate, respite the sentence until the end of the next session of the general assembly.
- His powers in criminal cases. Sec. 12. There shall be a seal of this state, which shall be kept by the governor, and used by him officially, and the present seal of the territory shall be the seal of the state, until otherwise directed by the general assembly.
- Seal. Sec. 13. All commissions shall be in the name and by the authority of the state of Alabama, be sealed with the state seal, signed by the governor, and attested by the secretary of state.
- Commissions. Sec. 14. There shall be a secretary of state, appointed by joint vote of both houses of the general assembly, who shall continue in office during the term of two years. He shall keep a fair register of all official acts and proceedings of the governor, and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before the general assembly; and shall perform such other duties as may be required of him by law.
- Secretary of state, his appointment and duties. Sec. 15. Vacancies that may happen in offices, the appointment to which is vested in the general assembly, shall be filled by the gov-
- Vacancies, how filled.

ernor, during the recess of the general assembly, by granting commissions which shall expire at the end of the next session.

Sec. 16. Every bill which shall have passed both houses of the general assembly, shall be presented to the governor: if he approve, he shall sign it, but if not, he shall return it with his objections, to the house in which it shall have originated, who shall enter the objections at large upon the journals, and proceed to reconsider it; if, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered; if approved by a majority of the whole number elected to that house, it shall become a law: but in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered on the journals of each house respectively: if any bill shall not be returned by the governor within five days, Sundays excepted, after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return, in which case it shall not be a law.

Governor's powers and duty in relation to bills.

Sec. 17. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except on questions of adjournment, shall be presented to the governor, and, before it shall take effect, be approved by him, or being disapproved, shall be re-passed by both houses, according to the rules and limitations prescribed in the cases of a bill.

Joint resolutions to be passed as bills.

Sec. 18. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the president of the senate shall exercise all the power and authority appertaining to the office of governor, until the time pointed out by this constitution for the election of governor shall arrive, unless the general assembly shall provide by law for the election of a governor to fill such vacancy, or until the governor absent or impeached shall return or be acquitted.

Proceedings on impeachment, &c. of governor.

Sec. 19. If, during the vacancy of the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the house of representatives shall, in like manner, administer the government.

Who to administer the government.

Sec. 20. The president of the senate and speaker of the house of representatives, during the time they respectively administer the government, shall receive the same compensation which the governor would have received, had he been employed in the duties of his office.

Compensation.

Sec. 21. The governor shall always reside, during the session of the general assembly, at the place where their session may be held, and at all other times, wherever, in their opinion, public good may require.

Governor, where to reside.

Sec. 22. No person shall hold the office of governor, and any other office or commission, civil or military, either in this state, or under any state, or the United States, or any other power, at one and the same time.

Governor not to hold any office.

Sec. 23. A state treasurer and a comptroller of public accounts shall be annually elected, by joint vote of both house of the general assembly.

Treasurer and comptroller, how elected.

Sec. 24. A sheriff shall be elected in each county by the qualified electors thereof, who shall hold his office for the term of three years, unless sooner removed, and who shall not be eligible to serve either

Sheriff, how elected; term of service and qualification.

Vacancies,
how filled.

as principal or deputy for the three succeeding years. Should a vacancy occur subsequent to an election, it shall be filled by the governor, as in other cases, and the person so appointed shall continue in office until the next general election, when such vacancy shall be filled by the qualified electors, and the sheriff then elected shall continue in office for three years.

Militia.

Militia, how
organized.

Sec. 1. The general assembly shall provide by law for organizing and disciplining the militia of this state, in such manner as they shall deem expedient, not incompatible with the constitution and laws of the United States in relation thereto.

Who excu-
sed.

Sec. 2. Any person, who conscientiously scruples to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service.

Governor
may call
forth.

Sec. 3. The governor shall have power to call forth the militia to execute the laws of the state, to suppress insurrections, and repel invasions.

Officers, how
elected.
Proviso.

Sec. 4. All officers of the militia shall be elected or appointed in such manner as may be prescribed by law: provided, that the general assembly shall not make any such elections or appointments, other than those of adjutants general, and quarter-masters general.

Aids, &c.
how ap-
pointed.]

Sec. 5. The governor shall appoint his aids-de-camp; majors general, their aids-de-camp, and all other division and staff officers; brigadiers general shall appoint their aids, and all other brigade staff officers; and colonels shall appoint their regimental staff officers.

General as-
sembly to di-
vide militia,
and fix rank
of staff.

Sec. 6. The general assembly shall fix by law the method of dividing the militia into divisions, brigades, regiments, battalions, and companies; and shall fix the rank of all staff officers.

ARTICLE V.

Judicial Department.

Judicial
power,
where vest-
ed.

Sec. 1. The judicial power of this state shall be vested in one supreme court, circuit courts to be held in each county in the state, and such inferior courts of law and equity, to consist of not more than five members, as the general assembly may, from time to time, direct, ordain, and establish.

Powers of
the supreme
court.

Sec. 2. The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may, from time to time, be prescribed by law: Provided, that the supreme court shall have power to issue writs of injunction, *mandamus*, *quo warranto*, *habeas corpus*, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions.

Who to be
judges of su-
preme court.

Sec. 3. Until the general assembly shall otherwise prescribe, the powers of the supreme court shall be vested in, and its duties shall be performed by, the judges of the several circuit courts within this state: and they, or a majority of them, shall hold such sessions of the supreme court, and at such times as may be directed by law:

Proviso.

Provided, that no judge of the supreme court shall be appointed

before the commencement of the first session of the general assembly, which shall be begun and held after the first day of January, in the year one thousand eight hundred and twenty-five.

Sec. 4. The supreme court shall be holden at the seat of govern-^{Supreme court, where holden.}ment, but may adjourn to a different place, if that shall have become dangerous from an enemy or from disease.

Sec. 5. The state shall be divided into convenient circuits, and each circuit shall contain not less than three, nor more than six coun-^{State to be divided into circuits.}ties : and for each circuit there shall be appointed a judge, who shall, after his appointment, reside in the circuit for which he may be appointed.

Sec. 6. The circuit court shall have original jurisdiction in all^{Jurisdiction of circuit courts.} matters, civil and criminal, within this state, not otherwise excepted in this constitution ; but in civil cases, only when the matter or sum in controversy exceeds fifty dollars.

Sec. 7. A circuit court shall be held in each county in the state,^{When held.} at least twice in every year, and the judges of the several circuit courts may hold courts for each other, when they may deem it expedient, and shall do so when directed by law.

Sec. 8. The general assembly shall have power to establish a^{Chancery courts, how established.} court or courts of chancery, with original and appellate equity jurisdiction ; and until the establishment of such court or courts, the said jurisdiction shall be vested in the judges of the circuit courts respectively : Provided, that the judges of the several circuit courts shall have power to issue writs of injunction, returnable into the courts of chancery.

Sec. 9. The general assembly shall have power to establish, in^{Courts of probate established.} each county within this state, a court of probate, for the granting of letters testamentary and of administration and for orphans' business.

Sec. 10. A competent number of justices of the peace shall be^{Justices of peace, their jurisdiction.} appointed in and for each county, in such mode and for such term of office as the general assembly may direct. Their jurisdiction in civil cases shall be limited to causes in which the amount in controversy shall not exceed fifty dollars. And in all cases, tried by a justice of the peace, right of appeal shall be secured, under such rules and regulations as may be prescribed by law.

Sec. 11. Judges of the supreme and circuit courts, and courts of^{Compensation of Judges.} chancery, shall, at stated times, receive for their services a compensation, which shall be fixed by law, and shall not be diminished during their continuance in office : but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under this state, the United States, or any other power.

Sec. 12. Chancellors, judges of the supreme court, judges of the^{How elected.} circuit courts, and judges of the inferior courts, shall be elected by joint vote of both houses of the general assembly.

Sec. 13. The judges of the several courts in this state shall hold^{Term of service. How removed.} their offices during good behaviour ; and for wilful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment, the governor shall remove any of them, on the address of two-thirds of each house of the general assembly : *Provided, however,* that the cause or causes for which such removal shall be required, shall be stated at length in such address, and entered on the journals of each house ; *And provided further,* that the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defence, before any vote for such address shall pass ; and in all such cases the vote shall be taken by yeas and nays, and entered on the journals of each house

respectively; *And provided also*, that the judges of the several circuit courts, who shall be appointed before the commencement of the first session of the general assembly, which shall be begun and held after the first day of January, in the year of our Lord one thousand eight hundred and twenty-five, shall only hold their offices during good behaviour, until the end of the said session, at which time their commissions shall expire.*

Age disqual- Sec. 14. No person who shall have arrived at the age of seventy
ifies. years shall be appointed to, or continue in, the office of judge in this state.

Clerks of Sec. 15. Clerks of the circuit and inferior courts in this state shall
courts, how be elected by the qualified electors in each county, for the term of
elected. four years, and may be removed from office for such causes and in
Term of ser- such manner as may be prescribed by law; and should a vacancy
vice. occur, subsequent to an election, it shall be filled by the judge or
Vacancies, judges of the court in which such vacancy exists; and the person so
how filled. appointed shall hold his office until the next general election: *Pro-
vided, however*, that after the year one thousand eight hundred and
twenty-six, the general assembly may prescribe a different mode of
appointment, but shall not make such appointment.

Proviso. Sec. 16. The judges of the supreme court shall, by virtue of their
offices, be conservators of the peace throughout the state; as also
the judges of the circuit courts in their respective districts, and judges
of the inferior courts in their respective counties.

Conserva- Sec. 17. The style of all process shall be "The State of Alaba-
tors of the ma," and all prosecutions shall be carried on in the name, and by the
peace. authority of the state of Alabama, and shall conclude "against the
peace and dignity of the same."

Style of pro- Sec. 18. There shall be an attorney-general for the state, and as
cess. many solicitors as the general assembly may deem necessary, to be
elected by a joint vote thereof, who shall hold their offices for the
term of four years, and shall receive for their services a compensa-
tion, which shall not be diminished during their continuance in
office.

Attorney- Sec. 19. There shall be an attorney-general for the state, and as
general and many solicitors as the general assembly may deem necessary, to be
solicitors. elected by a joint vote thereof, who shall hold their offices for the
Term of ser- term of four years, and shall receive for their services a compensa-
vice and tion, which shall not be diminished during their continuance in
compensa- office.

Impeachments.

Who to im- Sec. 1. The house of representatives shall have the sole power of
peach. impeaching.

To be tried Sec. 2. All impeachments shall be tried by the senate: when
by senate; sitting for that purpose, the senators shall be on oath or affirmation:
who shall and no person shall be convicted without the concurrence of two-
take oath. thirds of the members present.

How con- Sec. 3. The governor and all civil officers shall be liable to im-
victed. peachment for any misdemeanor in office; but judgment in such
Who liable cases shall not extend further than removal from office, and to dis-
to impeach- qualification to hold any office of honor, trust, or profit, under the
ment. state; but the party convicted shall, nevertheless, be liable and sub-
To what ex- ject to indictment, trial, and punishment, according to law.

* This section was amended in 1830.—See Amendment.

ARTICLE VI.

General Provisions.

Sec. 1. The members of the general assembly, and all officers, executive and judicial, before they enter on the execution of their respective offices, shall take the following oath or affirmation, to wit: "I solemnly swear (or affirm, as the case may be,) that I will support the constitution of the United States, and constitution of the state of Alabama, so long as I continue a citizen thereof, and that I will faithfully discharge, to the best of my abilities, the duties of—, according to law: So help me God."

Sec. 2. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

Sec. 3. The general assembly shall have power to pass such penal laws to suppress the evil practice of duelling, extending to disqualification from office or the tenure thereof, as they may deem expedient.

Sec. 4. Every person shall be disqualified from holding any office or place of honor or profit, under the authority of the state, who shall be convicted of having given or offered any bribe to procure his election or appointment.

Sec. 5. Laws shall be made to exclude from office, from suffrage, and from serving as jurors, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon, from power, bribery, tumult, or other improper conduct.

Sec. 6. In all elections by the general assembly, the members thereof shall vote *viva voce*, and the votes shall be entered on the journals.

Sec. 7. No money shall be drawn from the treasury, but in consequence of an appropriation made by law; and a regular statement and account of the receipts and expenditures of all public moneys shall be published annually.

Sec. 8. All lands liable to taxation in this state, shall be taxed in proportion to their value.

Sec. 9. The general assembly shall direct, by law, in what manner, and in what courts, suits may be brought against the state.

Sec. 10. It shall be the duty of the general assembly to regulate, by law, the cases in which deductions shall be made from the salaries of public officers, for neglect of duty in their official capacities, and the amount of such deduction.

Sec. 11. Absence on business of this state, or of the United States, or on a visit, or necessary private business, shall not cause a forfeiture of a residence once obtained.

Sec. 12. No member of congress, nor any person holding any office of profit or trust under the United States, (the office of postmaster excepted,) or either of them, or any foreign power, shall hold or exercise any office of profit under this state.

Sec. 13. Divorces from the bonds of matrimony shall not be granted but in cases provided for by law, by suit in chancery: and no

decree for such divorce shall have effect, until the same shall be sanctioned by two-thirds of both houses of the general assembly.

Libels, how tried.

Sec. 14. In prosecutions for the publishing of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the courts.

Election returns.

Sec. 15. Returns of all elections for officers, who are to be commissioned by the governor, and for members of the general assembly, shall be made to the secretary of state.

Establishment of new counties, &c.

Sec. 16. No new county shall be established by the general assembly, which shall reduce the county or counties, or either of them, from which it shall be taken, to a less content than nine hundred square miles; nor shall any county be laid off of less contents. Every new county, as to the right of suffrage and representation, shall be considered as a part of the county or counties from which it was taken, until entitled by numbers to the right of separate representation.

Right of suffrage.

Regulation of counties, &c.

Sec. 17. The general assembly shall, at their first session, which may be holden in the year eighteen hundred and twenty-eight, or at the next succeeding session, arrange and designate boundaries for the several counties within the limits of this state, to which the Indian title shall have been extinguished, in such manner as they may deem expedient, which boundaries shall not be afterward altered, unless by the agreement of two-thirds of both branches of the general assembly; and, in all cases of ceded territory acquired by the state, the general assembly may make such arrangements and designations of the boundaries of counties within such ceded territory, as they may deem expedient, which shall only be altered in like manner: *Provided*, that no county, hereafter to be formed, shall be of less extent than nine hundred square miles.

Arbitrations.

Sec. 18. It shall be the duty of the general assembly to pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by the parties, who may choose that summary mode of adjustment.

Penal code.

Sec. 19. It shall be the duty of the general assembly, as soon as circumstances will permit, to form a penal code, founded on principles of reformation, and not of vindictive justice.

Digest laws.

Sec. 20. Within five years after the adoption of this constitution, the body of our laws, civil and criminal, shall be revised, digested, and arranged, under proper heads, and promulgated in such manner as the general assembly may direct: and a like revision, digest, and promulgation, shall be made within every subsequent period of ten years.

Internal improvement.

Sec. 21. The general assembly shall make provisions by law for obtaining correct knowledge of the several objects proper for improvement in relation to the navigable waters, and to the roads in this state, and for making a systematic and economical application of the means appropriated to those objects.

Sec. 22. In the event of the annexation of any foreign territory to this state, by a cession from the United States, laws may be passed, extending to the inhabitants of such territory all the rights and privileges which may be required by the terms of such cession; any thing in this constitution to the contrary notwithstanding.

Education.

Schools, and the means of education, shall for ever be encouraged in this state; and the general assembly shall take measures to preserve, from unnecessary waste or damage, such lands as are or hereafter may be granted by the United States for the use of schools within each township in this state, and apply the funds, which may be raised from such lands, in strict conformity to the object of such grant. The general assembly shall take like measures for the improvement of such lands as have been or may be hereafter granted by the United States to this state, for the support of a seminary of learning, and the moneys which may be raised from such lands, by rent, lease, or sale, or from any other quarter, for the purpose aforesaid, shall be and remain a fund for the exclusive support of a state university, for the promotion of the arts, literature, and the sciences; and it shall be the duty of the general assembly, as early as may be, to provide effectual means for the improvement and permanent security of the funds and endowments of such institution.

Establishment of Banks.

Sec. 1. One state bank may be established, with such number of branches as the general assembly may, from time to time, deem expedient: *Provided*, that no branch bank shall be established, nor bank charter renewed, under the authority of this state, without the concurrence of two-thirds of both houses of the general assembly; *And provided, also*, that not more than one bank nor branch bank shall be established, nor bank charter renewed, at any one session of the general assembly, nor shall any bank or branch bank be established, or bank charter renewed, but in conformity with the following rules.

1. At least two-fifths of the capital stock shall be reserved for the state.

2. A proportion of power in the direction of the bank shall be reserved to the state, equal at least to its proportion of stock therein.

3. The state, and the individual stockholders, shall be liable, respectively, for the debts of the bank, in proportion to their stock holden therein.

4. The remedy for collecting debts shall be reciprocal, for and against the bank.

5. No bank shall commence operations, until half of the capital stock subscribed for be actually paid in gold or silver, which amount shall, in no case, be less than one hundred thousand dollars.

6. In case any bank or branch bank shall neglect or refuse to pay, on demand, any bill, note, or obligation, issued by the corporation according to the promise therein expressed, the holder of any such note, bill, or obligation, shall be entitled to receive and recover interest thereon, until the same shall be paid, or specie payments are resumed, by said bank, at the rate of twelve per cent. per annum from the date of such demand, unless the general assembly shall sanction such suspension of specie payments, and the general assembly shall have power, after such neglect or refusal, to adopt such measures as they may deem proper, to protect and secure the

rights of all concerned, and to declare the charter of such bank forfeited.

Other banks
may be ad-
mitted
branches.

7. After the establishment of a general state bank, the banks of this state now existing may be admitted as branches thereof, upon such terms as the legislature and the said banks may agree, subject, nevertheless, to the preceding rules.

Slaves.

Regulation
of slaves.

Sec. 1. The general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to this state from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state: *Provided*, that such person or slave be the *bona fide* property of such emigrants: *And provided, also*, that laws may be passed to prohibit the introduction into this state of slaves, who have committed high crimes in other states or territories. They shall have power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have full power to prevent slaves from being brought into this state as merchandise, and also to oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injuries to them extending to life or limb, and, in case of their neglect, or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of the owner or owners.

Sec. 2. In the prosecution of slaves for crimes, of a higher grade than petit larceny, the general assembly shall have no power to deprive them of an impartial trial by a petit jury.

Sec. 3. Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection of such slave.

Mode of amending and revising the Constitution.

Constitution,
how amend-
ed, &c.

The general assembly, whenever two-thirds of each house shall deem it necessary, may propose amendments to this constitution, which proposed amendments shall be duly published in print, at least three months before the next general election of representatives, for the consideration of the people, and it shall be the duty of the several returning officers, at the next general election which shall be held for representatives, to open a poll for, and make a return to the secretary of state for the time being, of the names of all those voting for representatives, who have voted on such proposed amendments, and if thereupon it shall appear that a majority of all the citizens of this state, voting for representatives, have voted in favor of such proposed amendments, and two-thirds of each house of the next general assembly, shall, after such an election, and before another, ratify the same amendments by yeas and nays, they shall be

valid, to all intents and purposes, as parts of this constitution: *Provided*, that the said proposed amendments shall, at each of the said sessions, have been read three times, on three several days, in each house.

SCHEDULE.

Sec. 1. That no inconvenience may arise from a change of territorial to a permanent state government, it is declared that all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if no such change had taken place: and all process, which shall, before the third Monday in September next, be issued in the name of the Alabama territory, shall be as valid as if issued in the name of the state.

Change of government not to affect contracts.

Sec. 2. All fines, penalties, forfeitures, and escheats, accruing to the Alabama territory, shall accrue to the use of the state.

Fines, &c. accrue to the state.

Sec. 3. The validity of all bonds and recognizances, executed to the governor of the Alabama territory, shall not be impaired by the change of government, but may be sued for and recovered in the name of the governor of the state of Alabama and his successors in office: and all criminal or penal actions, arising or now depending within the limits of this state, shall be prosecuted to judgment and execution in the name of said state, all causes of action arising to individuals, and all suits at law or in equity, now depending in the several courts within the limits of this state, and not already barred by law, may be commenced in, or transferred to, such courts as may have jurisdiction thereof.

Bonds and criminal actions, how prosecuted.

Sec. 4. All officers, civil or military, now holding commissions under the authority of the United States or of the Alabama territory, within this state, shall continue to hold and exercise their respective offices under the authority of this state, until they shall be superseded under the authority of this constitution, and shall receive from the treasury of this state the same compensation which they heretofore received, in proportion to the time they shall be so employed. The governor shall have power to fill vacancies by commissions, to expire so soon as elections or appointments can be made to such offices by authority of this constitution.

Territorial officers continued until superseded.

Sec. 5. All laws and parts of laws, now in force in the Alabama territory, which are not repugnant to the provisions of this constitution, shall continue and remain in force as the laws of this state, until they expire by their own limitation, or shall be altered, or repealed, by the legislature thereof.

What laws continued.

Sec. 6. Every white male person above the age of twenty-one years, who shall be a citizen of the United States, and resident in this state at the time of the adoption of this constitution, shall be deemed a qualified elector at the first election to be holden in this state. And every white male person who shall reside within the limits of this state at the time of the adoption of this constitution, and shall be otherwise qualified, shall be entitled to hold any office or place of honor, trust, or profit under this state; anything in this constitution to the contrary notwithstanding.

Qualification of voters.

Citizens.

Sec. 7. The president of this convention shall issue writs of election directed to the sheriffs of the several counties, requiring them to

President to issue writs of election.

cause an election to be held for a governor, representative to the congress of the United States, members of the general assembly, clerks of the several courts, and sheriffs of the respective counties, at the respective places of election in said counties, on the third Monday and the day following in September next, which election shall be conducted in the manner prescribed by the existing election laws of the Alabama territory; and the said governor and members of the general assembly, then duly elected, shall continue to discharge the duties of their respective offices, for the time prescribed by this constitution, and until their successors shall be duly qualified.

Apportion-
ment of rep-
resentation.

Sec. 8. Until the first enumeration shall be made, as directed by this constitution, the county of Autauga shall be entitled to two representatives; the county of Baldwin to one representative; the county of Blount to three representatives; the county of Cahawba to one representative; the county of Clarke to two representatives; the county of Conecuh to two representatives; the county of Cotaco to two representatives; the county of Dallas to two representatives; the county of Franklin to two representatives; the county of Lauderdale to two representatives; the county of Lawrence to two representatives; the county of Limestone to three representatives; the county of Madison to eight representatives; the county of Marengo to one representative; the county of Marion to one representative; the county of Monroe to five representatives; the county of Montgomery to three representatives; the county of Mobile to one representative; the county of St. Clair to one representative; the county of Shelby to two representatives; the county of Tuskaloosa to three representatives; and the county of Washington to two representatives. And each county shall be entitled to one senator, who shall serve for one term.

Oaths of
office, by
whom ad-
ministered.

Sec. 9. The oaths of office, herein directed to be taken, may be administered by any justice of the peace, until the general assembly shall otherwise direct.

ORDINANCE.

Convention
accept the
conditions of
the act of
congress ad-
mitting the
state into the
Union.

THIS convention, for and in behalf of the people inhabiting this state, do accept the propositions offered by the act of Congress, under which they are assembled; and this convention, for and in behalf of the people inhabiting this state, do ordain, agree, and declare, that they forever disclaim all right and title to the waste or unappropriated lands lying within this state; and that the same shall be and remain at the sole and entire disposition of the United States, and, moreover, that each and every tract of land, sold by the United States after the first day of September next, shall be and remain exempt from any tax, laid by the order or under the authority of this state, whether for state, county, township, parish, or any other purpose whatsoever, for the term of five years from and after the respective days of sales thereof, and that the lands belonging to the citizens of the United States, residing out of the limits of this state, shall never be taxed higher than the lands belonging to persons residing therein, and that no tax shall be imposed on lands the property of the United States; and that all navi-

gable waters within this state shall forever remain public highways, free to the citizens of this state and of the United States, without any tax, duty, impost, or toll therefor, imposed by this state: and this ordinance is hereby declared irrevocable, without the consent of the United States.

Done in convention at Huntsville, this second day of August, in the year of our Lord one thousand eight hundred and nineteen, and of American Independence the forty-fourth.

J. W. WALKER,
President of the Convention.

Attest:

JOHN CAMPBELL, *Secretary.*

AMENDMENT TO THE CONSTITUTION,

ADOPTED JANUARY 16, 1830.

Joint Resolution ratifying the proposed amendments to the Constitution of the State of Alabama, so as to limit the tenure of the Judges' offices to six years.

WHEREAS, the general assembly of this state, at the last session of the same, duly submitted to the people of the said state, a proposed amendment to the constitution of the said state: and whereas the people of this state, in the manner and form as provided by the constitution of this state, have accepted the said amendment, which is in the words and figures following:

Be it resolved by the senate and house of representatives of the state of Alabama, in general assembly convened, That the following amendments to the constitution of the state of Alabama, be proposed to the people of said state, which, when agreed to by a majority of all the citizens of said state, voting for representatives, and ratified by two-thirds of each house of the next general assembly, voting by yeas and nays, shall be valid to all intents and purposes whatever, as a part of the constitution of the state of Alabama, to-wit: Strike out the thirteenth section of the fifth article, and insert in lieu thereof the following: "The judges of the several courts of this state shall hold their offices for the term of six years; and for willful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment, the governor shall remove any of them on the address of two-thirds of each house of the general assembly: *Provided, however,* that the cause or causes for which such removal shall be required, shall be stated at length in such address, and entered on the journals of each house: *And provided further,* That the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defence, before any

Recital of proposed amendment.

Judges' term of service.

How removed.

Proviso.

Further pro-
viso.

vote for such address shall pass ; and in all such cases the vote shall be taken by yeas and nays, and entered on the journals of each house respectively : *And provided also*, that the judges now in office may hold their offices, until the session of the general assembly, which shall be held in the year one thousand eight hundred and thirty-three, and until their successors shall be elected and qualified, unless removed by address or impeachment."

Ratification.

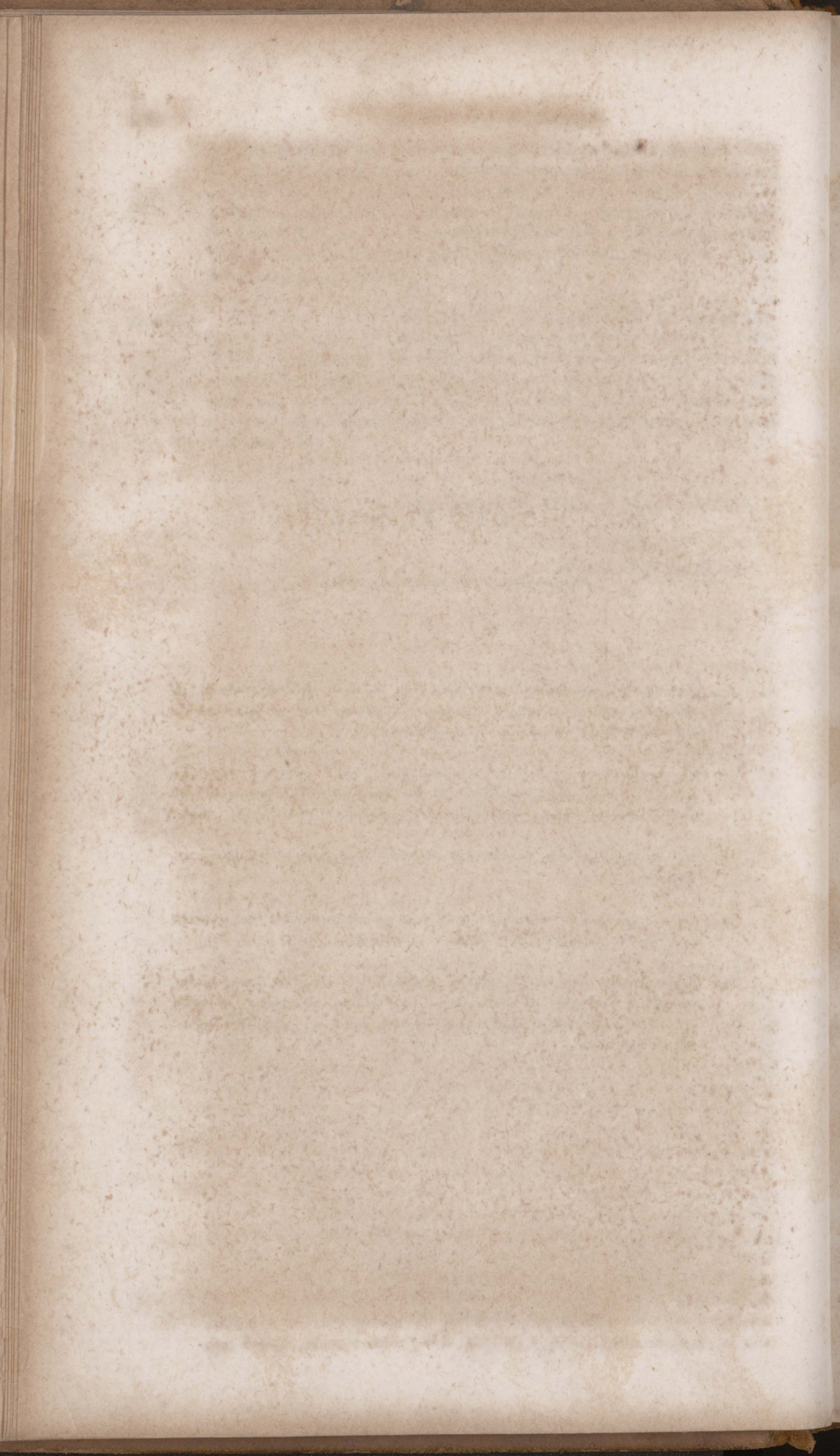
Therefore, be it resolved by the senate and house of representatives of the state of Alabama in general assembly convened, Two-thirds of each house concurring, that the aforesaid amendment to the constitution, proposed, as aforesaid, and accepted by the people as aforesaid, be ratified, and that the same, from and after the passage of this resolution, be and form a part of the constitution of the state of Alabama.

JOHN GAYLE,
Speaker of the House of Representatives.

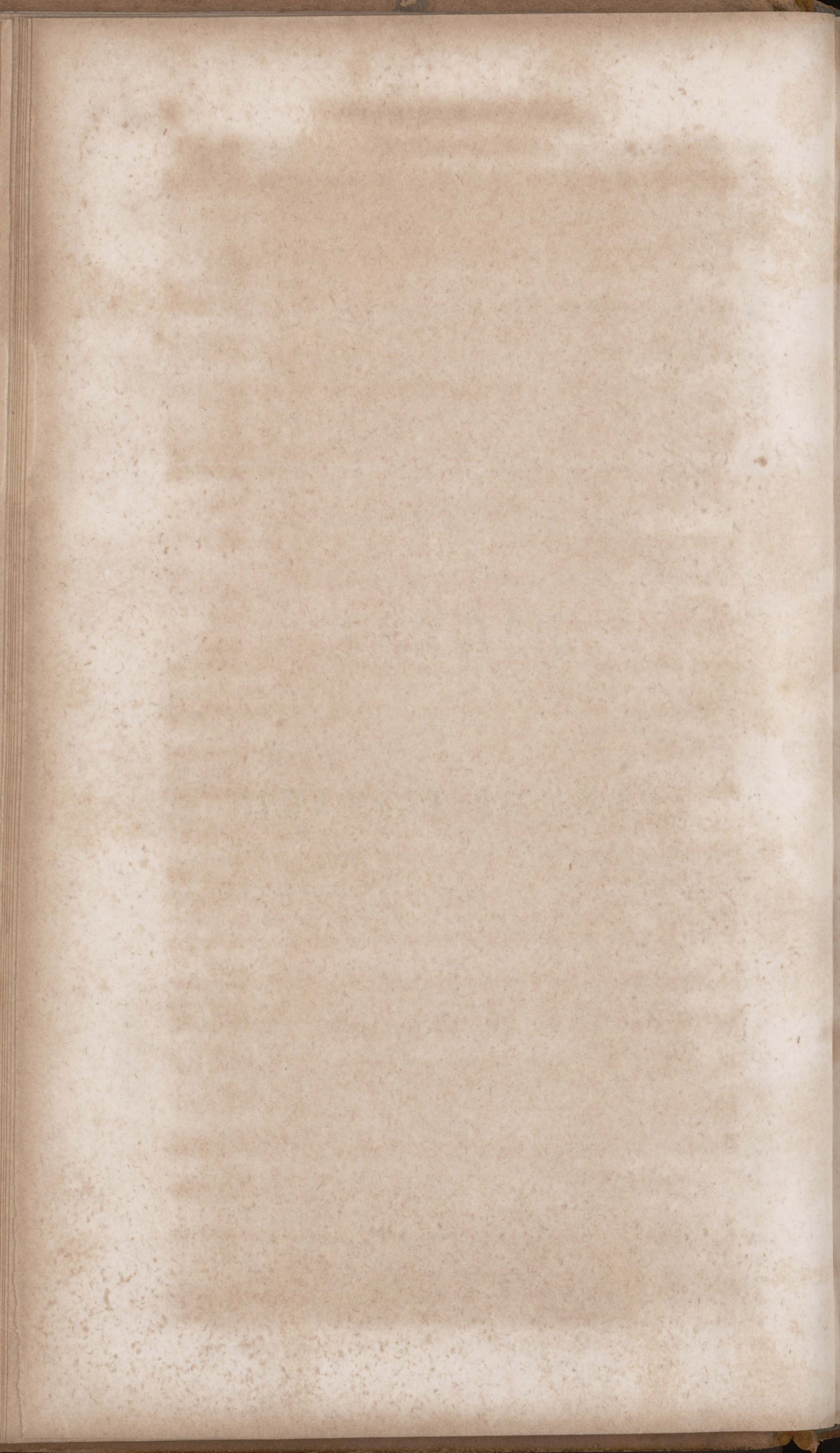
LEVIN POWELL,
President of the Senate.

A LIST
OF
THE ACTS OF CONGRESS
INCLUDED IN THIS DIGEST.

- An Act for an amicable settlement of limits with the state of Georgia, and authorizing the establishment of a government in the Mississippi Territory.—April 7, 1798.
- An Act supplementary to an act, entitled “An Act regulating the grants of land, and providing for the disposal of the lands of the United States, south of the state of Tennessee.”—March 27, 1804.
- An Act to enlarge the boundaries of the Mississippi Territory.—May 14, 1812.
- An Act to establish a separate territorial government for the eastern part of the Mississippi Territory.—March 3, 1817.
- An Act to enable the people of the Alabama Territory to form a constitution and state government; and for the admission of such state into the Union on an equal footing with the original states. March 2, 1819.



A
DIGEST
OF THE
LAWS OF ALABAMA.



A LIST OF THE STATUTE LAWS,

OF A

PUBLIC AND GENERAL NATURE,

From the Organization of the Mississippi Territory, to the close of the Session of the General Assembly for the year 1842, now in force, either wholly or in part, in the State of Alabama.

ARRANGED CHRONOLOGICALLY, AND NUMBERED.

YEAR AND NUMBER.	TITLE AND DATE.
1799: (1)	An Act concerning defalcation.—February 28, 1799.
1801: (1)	An Act to restrain idle and disorderly persons.—December 5, 1801.
1802: (1)	An Act for the limitation of actions, and for avoiding vexatious law-suits.—February 2, 1802.
(2)	An Act to prevent suits from abating on the death of either party.—May 13, 1802.
1803: (1)	An Act to prevent unlawful hunting, and for other purposes.—February 10, 1803.
(2)	An Act concerning notaries public.—February 10, 1803.
(3)	An Act respecting conveyances.—March 4, 1803.
(4)	An Act for the more easy partition of lands held by coparceners, joint-tenants, and tenants in common.—March 4, 1803.
(5)	An Act concerning divorce and alimony.—March 10, 1803.
(6)	An Act for the suppression of vice and immorality.—March 12, 1803.
(7)	An Act to prevent frauds and perjuries.—November 18, 1803.
(8)	An Act creating the offices, and defining the duties of territorial and county treasurers.—1803.
1804: (1)	An Act to prevent the evil practice of duelling.—November 11, 1804.
1805: (1)	An Act regulating the solemnization of marriages.—January 5, 1805.
(2)	An Act empowering courts of equity to proceed against absent defendants.—February 1, 1805.
(3)	An Act concerning forcible entries and detainers.—February 10, 1805.
(4)	An Act respecting slaves.—March 6, 1805.
(5)	An Act to prevent the liberation of slaves, only in cases hereafter named, and for other purposes.—July 20, 1805.

YEAR AND
NUMBER.

TITLE AND DATE.

- 1806: (1) An Act concerning wills and testaments; the settlement of intestates' estates; and the duty of executors, administrators and guardians.—February 10, 1806.
- (2) An Act for the appointment of an auditor of public accounts, ascertaining his duties in office, and for other purposes.—March 1, 1806.
- 1807: (1) An Act to render promissory notes and cotton receipts negotiable, and for other purposes.—1807.
- (2) An Act to prevent trespasses in certain cases, and declaring what shall be deemed a lawful enclosure.—1807.
- (3) An Act prescribing the duties of constables.—1807.
- (4) An Act concerning counsel and attorneys at law.—1807.
- (5) An Act concerning strays, and for improving the breed of horses.—1807.
- (6) An Act for the punishment of crimes and misdemeanors.—1807.
- (7) An Act respecting oaths of office.—1807.
- (8) An Act directing the method of proceeding in courts of common law and equity, against absconding debtors and other absent defendants.—1807.
- (9) An Act concerning bail in civil cases.—February, 1807.
- (10) An Act concerning the marks and brands of cattle and other stock.—February, 1807.
- (11) An Act to prevent the importation of distempered cattle into this territory.—February, 1807.
- (12) An Act to prevent the evil practice of gaming.—February 4, 1807.
- (13) An Act establishing weights and measures in the Mississippi territory.—February 4, 1807.
- (14) An Act establishing the fees of the several officers therein named, and for other purposes.—February 6, 1807.
- (15) An Act more particularly to define the duties of the auditor of public accounts and territorial treasurer, and for other purposes.—February 6, 1807.
- (16) An Act directing the manner of employing proper guards for the safe keeping of criminals in the several counties of this territory, and for other purposes.—February 6, 1807.
- (17) An Act regulating the mode of summoning juries, and for other purposes.—February 6, 1807.
- (18) An Act to provide for the more effectual administration of justice.—February 7, 1807.
- (19) An Act establishing superior courts, and declaring the powers of the territorial judges.—February 10, 1807.
- (20) An Act for the appointment of justices of the peace, and the establishment of county courts.—February 10, 1807.
- (21) An Act concerning executions, and for the relief of insolvent debtors.—February 10, 1807.
- (22) An Act concerning executions.—February 10, 1807.
- (23) An Act for the settlement and relief of the poor.—Feb. 10, 1807.
- (24) An Act to assist poor persons in their suits, and to enable infants to sue by their next friends.—February 10, 1807.

- | YEAR AND
NUMBER. | TITLE AND DATE. |
|---------------------|--|
| 1807: (25) | An Act to direct the building and establishing a court-house, jail, pillory, whipping-posts, and stocks, in every county.—February 10, 1807. |
| (26) | An Act for the well regulating of jails.—February 10, 1807. |
| (27) | An Act for the more effectual preservation of personal liberty.—February 10, 1807. |
| (28) | An Act establishing the place where the officers therein named shall keep their respective offices.—February 10, 1807. |
| (29) | An Act to prevent the importation and spreading of the small-pox, and other contagious diseases.—February 10, 1807. |
| (30) | An Act respecting sheriffs and coroners.—February 10, 1807. |
| (31) | An Act to regulate taverns and restrain tipping-houses.—February 10, 1807. |
| (32) | An Act concerning witnesses.—February 10, 1807. |
| (33) | An Act concerning juries.—February 11, 1807. |
| 1808: (1) | An Act prescribing the mode of collecting and accounting for fines and forfeitures, and for other purposes.—January, 26, 1808. |
| (2) | An Act supplementary to an act concerning public roads, and for other purposes.—March 1, 1808. |
| 1809: (1) | An Act concerning cotton gins.—March 3, 1809. |
| (2) | An Act to raise a revenue.—December, 1809. |
| (3) | An Act establishing patrols.—December 5, 1809. |
| (4) | An Act to amend the several laws now in force, respecting prison bound bonds.—December 7, 1809. |
| (5) | An Act to amend an act entitled "An Act for the settlement and relief of the poor."—December 18, 1809. |
| (6) | An Act supplementary to "An Act concerning wills and testaments; the settlement of intestates' estates; and the duty of executors, administrators and guardians."—December 22, 1809. |
| (7) | An Act respecting runaway slaves committed to jail.—December 22, 1809. |
| (8) | An Act respecting the auditor of public accounts, and the territorial treasurer.—December 23, 1809. |
| (9) | A Resolution relative to tax collectors.—December 23, 1809. |
| 1810: (1) | An Act to amend an act entitled "An Act concerning cotton gins."—November 27, 1810. |
| (2) | An Act concerning navigable streams within this territory.—November 27, 1810. |
| (3) | An Act fixing the time of holding the intermediate courts, extending the powers of the chief-justice of the orphans' court, and for other purposes.—December 3, 1810. |
| (4) | An Act to amend an act entitled "An Act to prevent the evil practice of gaming."—December 3, 1810. |
| (5) | An Act to amend an act entitled "An Act for the appointment of an auditor of public accounts, ascertaining his duties in office, and for other purposes.—Dec. 3, 1810. |
| 1811: (1) | An Act to empower securities to recover damages in a summary way.—December 7, 1811. |

- | YEAR AND
NUMBER. | TITLE AND DATE. |
|---------------------|--|
| 1811: | (2) An Act to amend an act entitled "An Act respecting conveyances."—December 7, 1811. |
| | (3) An Act regulating the mode of drawing and summoning jurors.—December 7, 1811. |
| | (4) An Act to encourage the building of public mills, and directing the duties of millers.—December 7, 1811. |
| | (5) An Act supplementary to an act to amend the act entitled "An Act allowing compensation to the several public officers therein mentioned, and for other purposes."—December 9, 1811. |
| | (6) An Act concerning county surveyors.—Dec. 11, 1811. |
| | (7) An Act concerning bastardy.—December 13, 1811. |
| | (8) An Act to amend the act for the punishment of crimes and misdemeanors.—December 16, 1811. |
| | (9) An Act concerning tax collectors.—December 16, 1811. |
| | (10) An Act to amend an act entitled "An Act to prevent the evil practice of gaming."—December 17, 1811. |
| | (11) An Act regulating judicial proceedings in certain cases, and for other purposes.—December 18, 1811. |
| | (12) An Act granting original jurisdiction to the judges of the superior courts in certain cases.—December 18, 1811. |
| | (13) An Act concerning writs of error, and for other purposes.—December 18, 1811. |
| | (14) An Act to amend an act creating the offices and defining the duties of territorial and county treasurers, and for other purposes.—December 18, 1811. |
| 1812: | (1) An Act (no title given.)—1812. |
| | (2) An Act to amend an act entitled "An Act to regulate taverns and restrain tippling-houses."—November 18, 1812. |
| | (3) An Act to provide for the recovery of rent in certain cases not heretofore provided for.—December 11, 1812. |
| | (4) An Act concerning drovers.—December 14, 1812. |
| | (5) An Act to amend an act entitled "An Act to encourage the building of public mills, and directing the duties of millers."—December 14, 1812. |
| | (6) An Act prescribing the mode of paying the expenses incurred for the safe-keeping of persons committed to the jail of any county within the territory, charged with any crime cognizable before any court within the same.—December 14, 1812. |
| | (7) An Act providing a tax for county purposes, and to reduce the territorial taxes.—December 17, 1812. |
| | (8) An Act concerning the assignment of bonds, notes, &c. and for other purposes.—December 18, 1812. |
| | (9) An Act to amend an act entitled "An Act establishing patrols, and for other purposes."—December 18, 1812. |
| | (10) An Act to amend the act for the punishment of crimes and misdemeanors.—December 21, 1812. |
| | (11) An Act concerning the distribution of intestates' estates.—December 21, 1812. |
| | (12) An Act to amend and reduce into one, the several acts to prevent the evil practice of gaming.—December 21, 1812. |
| | (13) An Act to amend an act respecting conveyances.—December 22, 1812. |

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| 1812: (14) | An Act concerning dower.—December 22, 1812. |
| (15) | An Act regulating the mode of collecting money by execution.—December 23, 1812. |
| (16) | An Act making further regulations in judicial proceedings. December 24, 1812. |
| (17) | An Act authorizing executors and administrators to make titles to real estate sold by their testator or intestate.—December 24, 1812. |
| (18) | An Act to amend and reduce into one, the several acts regulating elections.—December 24, 1812. |
| (19) | An Act to prevent frauds in certain cases, and for other purposes.—December 24, 1812. |
| (20) | An Act concerning the clerks of courts, and to reduce into one, the several laws regulating officers' fees, and more particularly to define the same.—December 24, 1812. |
| (21) | An Act amendatory to an act entitled "An Act prescribing the mode of collecting and accounting for fines and forfeitures.—December 24, 1812. |
| (22) | An Act fixing the compensation of the members and officers of the general assembly, and for other purposes.—December 24, 1812. |
| 1814: (1) | An Act to amend the attachment law.—January 15, 1814. |
| (2) | An Act to amend "An Act prescribing a summary mode for the trial of slaves."—January 15, 1814. |
| (3) | An Act providing in what manner distillers of spirituous liquors shall be authorized to dispose of the same.—January 15, 1814. |
| (4) | An Act to regulate the several courts in this territory, and to create a supreme court of errors and appeals.—January 20, 1814. |
| (5) | An Act for the relief of the several tax collectors.—January 20, 1814. |
| (6) | An act concerning jurors, and for other purposes.—January 22, 1814. |
| (7) | An Act to extend the jurisdiction of justices of the peace. January 22, 1814. |
| (8) | An Act for the relief of securities in certain cases.—December 1, 1814. |
| (9) | An act to prevent obstructions in the navigable waters in this territory.—December 1, 1814. |
| (10) | An Act authorizing county treasurers to pay jurors.—December 1, 1814. |
| (11) | An Act reducing the rate of tavern licenses, and for other purposes.—December 2, 1814. |
| (12) | An Act to amend an act entitled, "An Act to regulate the several courts in this territory, and create a supreme court of errors and appeals.—December 22, 1814. |
| (13) | An Act to authorize the governor of the Mississippi territory to accept of services of citizens exempted from military duty.—December 22, 1814. |
| (14) | An Act to amend an act entitled "An Act to amend an act entitled an act for the punishment of crimes and misdemeanors," passed the twenty-first of December, eighteen hundred and twelve.—December 24, 1814. |

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- (15) An Act concerning fugitives from justice.—December 24, 1814.
- (16) An Act to authorize tax collectors and other officers to publish advertisements in any public newspaper of this territory.—December 24, 1814.
- (17) An Act to revise, consolidate, and amend the several acts relative to justices of the peace and constables.—December, 27, 1814.
- (18) An Act to amend an act entitled “An Act to reduce into one and amend the several militia laws of this territory.” December 27, 1814.
- (19) Resolution directing the territorial treasurer to perform certain duties.—December 27, 1814.
- 1815: (1) An Act concerning the clerks of courts.—November 29, 1815.
- (2) An Act concerning slaves brought into this territory contrary to the laws of the United States.—December 8, 1815.
- (3) An Act to amend the act entitled “An Act to prevent the liberation of slaves, only in cases hereafter named, and for other purposes.”—December 19, 1815.
- (4) An Act to amend an act entitled “An Act for the appointment of justices of the peace, and the establishment of county courts.”—December 19, 1815.
- (5) An Act concerning jurors, and for other purposes.—December 20, 1815.
- (6) An Act to amend the act entitled “An Act concerning wills and testaments, the settlement of intestates’ estates, and the duty of executors, administrators, and guardians.”—December 23, 1815.
- (7) An Act additional to an act entitled “An Act making further regulations in judicial proceedings.”—December 23, 1815.
- (8) An Act concerning prisoners.—December 23, 1815.
- (9) An Act concerning incorporated towns.—December 23, 1815.
- (10) An Act concerning weights and measures.—December 23, 1815.
- (11) An Act supplementary to an act entitled “An Act to amend and reduce into one the several acts regulating elections.”—December 27, 1815.
- (12) An Act to regulate judicial proceedings.—December 27, 1815.
- (13) An Act making appropriations, &c.—December 27, 1815.
- (14) An Act to promote health, by preventing the sale of unwholesome liquors and provisions.—December 27, 1815.
- (15) An Act to raise a revenue.—December 27, 1815.
- 1816: (1) An Act concerning stays on executions, and regulating the fees of certain officers therein named.—January 12, 1816.
- (2) An Act to amend an act entitled “An Act to regulate taverns, and restrain tippling houses.”—November 27, 1816.
- (3) An Act to prevent the sale of spirituous liquors to Indians. December 6, 1816.

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| 1816: | <p>(4) An act to amend the act entitled "An Act concerning bastardy."—December 7, 1816.</p> <p>(5) An Act to amend the act concerning escheated property. December 10, 1816.</p> <p>(6) An Act to authorize executors and administrators to sell property of a testator or intestate, to complete payment for lands purchased of the United States.—December 12, 1816.</p> <p>(7) An Act to compel executors, guardians, and administrators, to settle their accounts.—December 12, 1816.</p> <p>(8) An Act establishing the fees of the clerk of the supreme court of errors and appeals.—December 12, 1816.</p> <p>(9) An Act concerning writs of error.—December 12, 1816.</p> <p>(10) An Act concerning injunctions.—December 12, 1816.</p> <p>(11) An Act to amend the "Act concerning surveyors."—December 12, 1816.</p> <p>(12) An Act regulating judicial proceedings in certain real and possessory actions, and for other purposes.—December 13, 1816.</p> <p>(13) An Act to amend an act entitled "An Act for the limitation of actions, and for avoiding vexatious law-suits." December 13, 1816.</p> <p>(14) An Act to amend an act entitled "An Act to reduce into one, and amend the several militia laws of this territory," approved the twenty-second day of January, eighteen hundred and fourteen.—December 13, 1816.</p> |
| 1818: | <p>(1) An Act to abolish the right of survivorship in all cases. February 4, 1818.</p> <p>(2) An Act for the better regulation of judicial proceedings. February 7, 1818.</p> <p>(3) An Act concerning writs of error.—February 10, 1818.</p> <p>(4) An Act to amend and alter the laws for the punishment of crimes and misdemeanors.—February 13, 1818.</p> <p>(5) An Act to amend an act entitled "An Act against usury." February 13, 1818.</p> <p>(6) An Act to authorize the change of venue in real actions. February 13, 1818.</p> <p>(7) An Act to amend the militia laws, and for other purposes. February 13, 1818.</p> <p>(8) An Act concerning oaths of office.—February 13, 1818.</p> <p>(9) An Act for the government of gin-holders, and for other purposes.—November 16, 1818.</p> <p>(10) An Act to restrain the issuing of small notes, commonly called change bills.—November 17, 1818.</p> <p>(11) An Act authorizing county courts to grant private ways in certain cases.—November 19, 1818.</p> <p>(12) An act to make lawful and obligatory certain marriages therein named.—November 19, 1818.</p> <p>(13) An Act to authorize deeds of conveyance to be acknowledged, and rights of dower to be relinquished before clerks of courts.—November 21, 1818.</p> <p>(14) An Act supplemental to the laws now governing judicial proceedings.—November 21, 1818.</p> <p>(15) An Act to authorize the governor of the territory to offer rewards for the apprehension of criminals.—November 21, 1818.</p> |

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| 1818: (16) | An Act to regulate sales at auction.—November 21, 1818. |
| (17) | An Act concerning hawkers and pedlers.—November 21, 1818. |
| (18) | An Act concerning the style of writs.—1818. |
| (19) | An Act to establish a bank in the town of Mobile.—November 20, 1818. |
| 1819: (1) | An Act prescribing the manner in which the oath of office shall be administered to the governor of this state, and certain other officers therein named.—November 9, 1819. |
| (2) | An Act excluding from suffrage, serving as jurors, and holding offices, such persons as may be convicted of bribery, forgery, perjury, and other high crimes and misdemeanors.—November 27, 1819. |
| (3) | An Act to prevent the obstruction of the navigable water-courses in this state.—December, 1819. |
| (4) | An Act providing for the determination of suits and controversies by arbitration.—December 13, 1819. |
| (5) | An Act affixing salaries to certain officers within the state of Alabama.—December 13, 1819. |
| (6) | An Act to regulate the proceedings in the courts of law and equity in this state.—December 14, 1819. |
| (7) | An Act to alter and amend the laws regulating the admission and practice of counsellors and attorneys at law.—December 16, 1819. |
| (8) | An Act to regulate elections, establish certain precincts in the counties therein named, and for other purposes.—December 16, 1819. |
| (9) | An Act prescribing the duties of certain public officers.—December 17, 1819. |
| (10) | An Act supplementary to "An Act regulating the proceedings of the courts of law and equity in this state," passed the present session of the general assembly.—December 17, 1819. |
| (11) | An Act to prevent the frauds and fraudulent combinations in the sale of the public lands within this state.—December 17, 1819. |
| (12) | An Act to authorize justices of the peace to receive the due acknowledgment and probate of deeds, and relinquishment of dower.—December 17, 1819. |
| (13) | An Act to suppress duelling.—December 17, 1819. |
| (14) | An Act to provide for the appointment of county officers, and for other purposes.—December 17, 1819. |
| (15) | An Act to regulate the rate of interest.—December 17, 1819. |
| (16) | An Act to provide for leasing for a limited time, the lands reserved by the congress of the United States, for the support of schools, within each township in this state, for a seminary of learning, and for other purposes.—December 17, 1819. |
| (17) | An Act to incorporate, and empower religious societies of every denomination to hold real estate.—December 17, 1819. |
| (18) | An Act to regulate patrols, and for other purposes.—December 17, 1819. |

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| 1819: (19) | An Act to fix the compensation of the members of the general assembly, and for other purposes therein named.—December 17, 1819. |
| (20) | An Act to lease certain salt springs.—December 17, 1819. |
| (21) | An Act specifying the causes and manner of removing clerks.—December 17, 1819. |
| (22) | An Act to amend the several acts relating to assessors and collectors of the public revenue.—December 17, 1819. |
| (23) | An Act for the inspection of lumber, and certain other articles therein named.—December 17, 1819. |
| 1820: (1) | An Act to amend an act passed at Huntsville on the sixteenth day of December, 1819, entitled, "An Act to alter and amend the laws regulating the admission and practice of counsellors and attorneys at law."—November 24, 1820. |
| (2) | An Act to provide for the public printing, and for other purposes.—November 30, 1820. |
| (3) | An Act authorizing and requiring the keepers of the several jails in the state, to receive and keep persons committed under the authority of the United States.—November 30, 1820. |
| (4) | An Act concerning writs of error.—December, 1820. |
| (5) | An Act to amend an act to regulate elections, establish certain precincts in the counties therein named, and for other purposes—passed on the sixteenth of December, 1819.—December 4, 1820. |
| (6) | An Act to authorize the governor to dispose of the public arms of the state.—December 7, 1820. |
| (7) | An Act to point out the duties of owners and keepers of water-mills who grind grain for toll.—December 9, 1820. |
| (8) | An Act to amend an act entitled "An Act providing for the determination of suits and controversies by arbitration," passed at Huntsville, December, 13, 1819.—December 11, 1820. |
| (9) | An Act supplementary to the several acts in relation to highways, bridges, and ferries.—December 12, 1820. |
| (10) | Resolution providing for the preservation of the state records.—December 16, 1820. |
| (11) | An Act for the collection of moneys due the state, and for other purposes.—December 16, 1820. |
| (12) | An Act to amend an act passed December 23, 1815, fixing a standard for measures.—December 16, 1820. |
| (13) | An Act for the relief of securities.—December 18, 1820. |
| (14) | An Act to establish a state university.—December 18, 1820. |
| (15) | An Act to prevent obstructing or diverting from the natural channel, any water-course which would otherwise flow through the land of any person.—December 18, 1820. |
| (16) | An Act giving jurisdiction to the courts of certain counties.—December 20, 1820. |
| (17) | An Act to authorize the judges of the circuit courts and justices of the county courts to take the acknowledg- |

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| | ments of deeds and relinquishments of dower.—December 20, 1820. |
| 1820: (18) | An Act to legalize registering certain deeds or conveyances of land in this state.—December 20, 1820. |
| (19) | An Act concerning executions and sales by sheriffs, and for other purposes.—December 20, 1820. |
| (20) | An Act supplementary to the laws now in force, concerning wills, intestates, and guardians.—Dec. 20, 1820. |
| (21) | An Act to regulate the proceedings in suits at common law.—December 20, 1820. |
| (22) | An Act giving jurisdiction over water-courses.—December 20, 1820. |
| (23) | An Act to amend an act to provide for leasing for a limited time, the lands reserved by the congress of the United States, for the support of schools within each township of this state, for a seminary of learning, and for other purposes.—December 20, 1820. |
| (24) | An Act to authorize persons who have settled on the sixteenth section in each township, to remove mill-works or machinery, and for other purposes.—December 20, 1820. |
| (25) | An Act to organize the militia of this state.—December 20, 1820. |
| (26) | An Act concerning the appointment of county officers.—December 20, 1820. |
| (27) | An Act to amend an act entitled "An Act for the inspection of lumber, and certain other articles therein named," passed at Huntsville on the seventeenth of December, 1819.—December 20, 1820. |
| (28) | An Act to alter and enlarge the terms of certain circuit courts in this state.—December 21, 1820. |
| (29) | An Act concerning divorce.—December 21, 1820. |
| (30) | An Act to reduce into one the several acts concerning strays.—December 21, 1820. |
| 1821: (1) | Resolution to regulate elections by the general assembly of the state.—1821. |
| (2) | An Act to authorize licensed ministers of the gospel, to solemnize the rites of matrimony.—June 13, 1821. |
| (3) | An Act to amend an act to alter and amend the laws regulating the admission and practice of counsellors and attorneys at law.—June 14, 1821. |
| (4) | An Act to repeal in part and amend an act entitled "An Act to regulate the proceedings in the courts of law and equity in this state."—June 14, 1821. |
| (5) | An Act to authorize executors, administrators, and guardians, to relinquish land under the act of congress, passed the second day of March, 1821, and for other purposes.—June 14, 1821. |
| (6) | An Act supplementary to an act making appropriations for the year one thousand eight hundred and twenty-one, and for other purposes.—June 15, 1821. |
| (7) | An Act amendatory to the laws now in force for the relief of insolvent debtors.—June 15, 1821. |
| (8) | An Act to reduce the expenses of the general assembly, and for other purposes.—June 15, 1821. |

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| 1821: | (9) An Act for the relief of the master builders and mechanics of the state of Alabama.—June 15, 1821. |
| | (10) An Act to repeal part of an act therein named, and for other purposes.—June 16, 1821. |
| | (11) An act to incorporate the most-worshipful grand lodge of ancient free-masons of Alabama, and its masonic jurisdiction.—June 16, 1821. |
| | (12) An Act supplementary to an act entitled "An Act to organize the militia of this state," passed at Cahawba, December 20, 1820, and for other purposes.—June 16, 1821. |
| | (13) An Act imposing a tax on non-resident and transient persons, making sale of goods, wares and merchandize in this state.—June 16, 1821. |
| | (14) An Act concerning persons residing on the university lands, and who have not rented the same, and for other purposes.—June 18, 1821. |
| | (15) An Act to amend an act giving jurisdiction to certain counties therein named, over that part of the Cherokee lands, lying within the limits of the state of Alabama.—November 27, 1821. |
| | (16) An Act to prevent sheriffs and other officers from levying executions in certain cases.—November 27, 1821. |
| | (17) An Act to amend and repeal a part of the second section of an act to authorize the governor to dispose of the public arms of this state, passed on the seventh day of December, 1820.—November 28, 1821. |
| | (18) An Act authorizing a lottery for the making of a turnpike road, leading from the city of Mobile to Chickasaw Bogue Creek, in the county of Mobile, and for other purposes.—December 3, 1821. |
| | (19) An Act to regulate the mode of issuing grants and patents in this state.—December 6, 1821. |
| | (20) An Act supplementary to an act entitled "An Act to suppress duelling," passed on the 17th December, 1819.—December 6, 1821. |
| | (21) An Act to fix the time for convening the general assembly of the state of Alabama.—December 6, 1821. |
| | (22) An Act respecting rents.—December 12, 1821. |
| | (23) An Act to form a sixth judicial circuit, and for other purposes therein mentioned.—December 13, 1821. |
| | (24) An Act to repeal in part and amend an act entitled "An Act to constitute a court of oyer and terminer for the trial of slaves, and for other purposes."—December 13, 1821. |
| | (25) An Act more effectually to enforce the acts of the general assembly of the 21st December, 1820, and of June the 14th, in relation to roads in this state.—December 15, 1821. |
| | (26) An Act supplementary to an act entitled "An Act for the relief of securities."—December 15, 1821. |
| | (27) An Act in relation to the banking institutions of this state.—December 17, 1821. |
| | (28) An Act to repeal in part and amend an act entitled "An Act to repeal in part and amend an act entitled, An Act |

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to regulate the proceedings in the courts of law and equity in this state," passed the fourteenth day of June last.—December 17, 1821.

- 1821: (29) An Act for the punishment of malicious mischief.—December 17, 1821.
- (30) An Act concerning writs and executions.—December 17, 1821.
- (31) An Act to abolish the fictitious proceedings in ejectment, and for other purposes therein mentioned.—December 17, 1821.
- (32) An Act concerning jurors, and for other purposes.—December 17, 1821.
- (33) An Act to alter and amend the several acts now in force organizing the militia of this state.—December 17, 1821.
- (34) An Act to provide for assessing and collecting the taxes of this state.—December 17, 1821.
- (35) An Act prescribing the manner of changing the venue in criminal cases, and for other purposes.—December 18, 1821.
- (36) An Act supplementary to an act to establish a state university.—December 18, 1821.
- (37) An Act to repeal in part and amend the *forty-third* section of an act to organize the militia of this state, passed 20th December, 1820.—December 18, 1821.
- (38) An Act to amend the law regulating proceedings upon the claims of property under execution.—December 19, 1821.
- (39) An Act to alter and amend the militia laws of this state. December 26, 1821.
- 1822: (1) An Act to prevent frivolous and vexatious law-suits.—December, 1822.
- (2) An Act to prevent immoral and disorderly conduct at places of religious worship.—December 10, 1822.
- (3) An Act concerning the judges of the county court.—December 12, 1822.
- (4) An Act to authorize the governor of this state to remit all or part of any forfeiture which has or may accrue to this state.—December 12, 1822.
- (5) An Act to suppress the evil and pernicious practice of fire-hunting.—December 12, 1822.
- (6) An Act the better to secure debts upon writs of error.—December 12, 1822.
- (7) An Act concerning intestates' estates.—December 14, 1822.
- (8) An Act concerning inquiry of damages.—December 19, 1822.
- (9) An Act for the trial of the right of property taken by virtue of an execution or attachment, and claimed by any person not a party to the suit.—December 20, 1822.
- (10) An Act to divide the state into districts for electing representatives to congress.—December 21, 1822.
- (11) An Act to continue in force and amend an act entitled "An Act to repeal in part and amend an act entitled, An Act to regulate the proceedings in the courts of law

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- and equity in this state," and for other purposes therein mentioned.—December 24, 1822.
- 1822: (12) An Act to repeal in part the statute of limitations in criminal cases.—December 24, 1822.
- (13) An Act to compel clerks of circuit and county courts to give bond and security within the time therein prescribed.—December 24, 1822.
- (14) An Act to repeal in part and amend an act entitled "An Act supplementary to an act to establish a state university."—December 24, 1822.
- (15) An Act to provide for the printing of the laws and journals, and for other purposes.—December 25, 1822.
- (16) An Act giving execution for costs in the supreme court. December 26, 1822.
- (17) An Act to prevent free negroes and mulattoes from retailing spirituous liquors and for other purposes.—December 26, 1822.
- (18) An Act to authorize administrators to sell land belonging to the estate of their intestate, to which a complete title has not been obtained.—December 27, 1822.
- (19) An Act to authorize fathers to devise the custody and tuition of their infant children.—December 28, 1822.
- (20) An Act to enforce the payment of moneys collected by officers of courts.—December 28, 1822.
- (21) An Act to prescribe the mode of certifying executions from justices of the peace, from one county to another. December 28, 1822.
- (22) An Act providing for the election of sheriff in certain cases, and for other purposes.—December 28, 1822.
- (23) An Act concerning writs of error *coram vobis*.—December 30, 1822.
- (24) An Act to authorize the judges of the county courts and commissioners of roads and revenue within this state, to make an allowance therein named.—December 30, 1822.
- (25) An Act for the preservation of the several court-houses in this state.—December 31, 1822.
- (26) An Act relative to turnpike roads.—December 31, 1822.
- (27) An Act to authorize a change of venue in chancery cases in certain cases.—December 31, 1822.
- (28) An Act to provide for the election of justices of the peace and constables.—December 31, 1822.
- (29) An Act to revise, consolidate, and amend the several acts relative to the militia of this state.—December 31, 1822.
- (30) An Act relative to the securities of clerks, sheriffs, and other officers.—December 31, 1822.
- (31) An Act appointing an agent to receive the *three per cent.* fund.—December 31, 1822.
- (32) An Act for the regulation of assessors and collectors, so far as relates to the payment of money.—December 31, 1822.
- (33) An Act authorizing the judge of the county court of Mobile county, to appoint a public weigher in the city of Mobile.—December 31, 1822.

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- 1823: (1) An Act to regulate proceedings in chancery suits.—January 1, 1823.
- (2) An Act to provide for leasing the sixteenth sections, and for the application of the funds arising therefrom to the purposes of education.—January 1, 1823.
- (3) An Act to carry into effect the laws of the United States, prohibiting the slave trade.—January 1, 1823.
- (4) An Act to set apart a separate fund for the support of the poor in each county.—January 1, 1823.
- (5) An Act to make appropriations for certain claims against the state.—January 1, 1823.
- (6) An Act respecting bail in civil cases.—December 9, 1823.
- (7) An Act concerning writs of *certiorari*.—December 9, 1823.
- (8) An Act to legalize registering and recording certain deeds or conveyances of land in this state, and for other purposes.—December 9, 1823.
- (9) An Act restricting the recovery of claims against the counties respectively, in certain cases.—December 9, 1823.
- (10) An Act supplementary to an act entitled "An Act to authorize administrators to sell land belonging to the estate of their intestate, to which a complete title has not been obtained," passed December 27th, 1822.—December 10, 1823.
- (11) An Act supplementary to the laws respecting garnishment.—December 17, 1823.
- (12) An Act to compel defendants to bills of injunction to give bond and security, before they shall have the benefit of executions on their judgments at law.—December 17, 1823.
- (13) An Act to provide for contesting elections of justices of the peace and constables.—December 17, 1823.
- (14) An Act to alter and amend the existing laws concerning strays.—December 17, 1823.
- (15) An Act amendatory to an act entitled "An Act to provide for the printing of the laws and journals, and for other purposes," passed December 25th, 1822.—December 17, 1823.
- (16) Resolutions requiring the chairman of the committees on enrolled bills, to preserve the engrossed copies of all acts and joint resolutions, and file them with the secretary of state.—December 17, 1823.
- (17) An Act to establish the bank of the state of Alabama.—December 20, 1823.
- (18) An Act to regulate escheats in this state, and to appoint escheators.—December 20, 1823.
- (19) An Act to regulate the licensing of physicians to practise, and for other purposes therein named.—December 22, 1823.
- (20) An Act explanatory of the several acts now in force in this state, to suppress duelling.—December 24, 1823.
- (21) An Act to provide for the choosing electors of president and vice-president of the United States.—December 26, 1823.

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- (22) An Act supplemental to an act to establish the bank of the state of Alabama.—December 29, 1823.
 - (23) An Act to amend an act entitled "An Act to regulate the proceedings in the courts of law and equity in this state." December 29, 1823.
 - (24) An Act to prevent fraudulent conveyances.—December 29, 1823.
 - (25) An Act to amend the several acts for the settlement and relief of the poor.—December 29, 1823.
 - (26) Resolution directing the governor to commission the several persons elected members of the medical boards. December 29, 1823.
 - (27) An Act in relation to the sixteenth sections.—December 30, 1823.
 - (28) An Act to regulate the commissions of assessors and tax-collectors in this state.—December 30, 1823.
 - (29) An Act to compel parties to a suit who plead the loss of any instrument in writing under which they claim a benefit, to make oath of the truth of such pleading.—December 31, 1823.
 - (30) An Act restricting officers from taking commissions on costs collected by them on executions.—December 31, 1823.
 - (31) An Act to provide for the payment of state witnesses.—December 31, 1823.
 - (32) An Act to increase the compensation of jurors.—December 31, 1823.
 - (33) An Act for the better regulating the public officers in the several counties in this state.—December 31, 1823.
 - (34) An Act in relation to seamen belonging to vessels in merchants' service.—December 31, 1823.
 - (35) An Act declaring the old road from Warren Stone's in Montgomery county to the town of Montgomery, the state road, and for other purposes.—December 31, 1823.
 - (36) An Act amendatory to the laws now in force respecting roads, &c.—December 31, 1823.
 - (37) An Act to repeal in part and amend an act entitled "An Act supplementary to an act to establish a state university," passed December 18, 1821.—December 31, 1823.
 - (38) An Act to revise and amend an act entitled "An Act to revise, consolidate, and amend the several acts relative to the militia of this state.—December 31, 1823.
 - (39) Resolution in relation to the printing and distribution of the acts, resolutions, and journals of the general assembly.—December 31, 1823.
- 1824 : (1) An Act to amend an act entitled "An Act to prevent the frauds and fraudulent combinations in the sales of the public lands within this state, passed at Huntsville on the 17th of December, 1819.—December, 1824.
- (2) An Act to prevent the abatement of suits at common law. December 2, 1824.
 - (3) An Act to repeal in part an act therein mentioned, and requiring the plea of set-off, or notice thereof in certain cases.—December 15, 1824.

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- 1824: (4) An Act amendatory of an act entitled "An Act regulating escheats in the state, and to appoint escheators," and for other purposes.—December 15, 1824.
- (5) An Act making bastards capable of inheriting, and transmitting inheritance on the part of their mothers.—December 18, 1824.
- (6) An Act regulating proceedings on penal bonds.—December 20, 1824.
- (7) An Act to authorize judges of the county courts to practise law out of the county in which they may reside.—December 20, 1824.
- (8) An Act authorizing executors, &c. to relinquish lands under the act of Congress of the 18th May, 1824.—December 20, 1824.
- (9) An Act to establish a county therein named, and for other purposes.—December 20, 1824.
- (10) An Act to divide the thirty-second regiment of the militia of this state.—December 20, 1824.
- (11) An Act the better to provide for the punishment of escapes.—December 22, 1824.
- (12) An Act to provide for compensating the electors for president and vice-president of the United States.—December 22, 1824.
- (13) An Act for rendering the decision of civil causes more speedy and less expensive than heretofore.—December 23, 1824.
- (14) An Act concerning prisons and prisoners.—December 23, 1824.
- (15) An Act amendatory of an act concerning divorce, passed December 21st, 1820.—December 23, 1824.
- (16) An Act concerning costs where suits are instituted in the name of one person for the use of another.—December 24, 1824.
- (17) An Act giving further time in which executions shall be made returnable, when issued by justices of the peace, from one county to another.—December 24, 1824.
- (18) An Act to regulate the mode of taxing costs on appeals, taken from the decisions of the justices of the peace, to the circuit and county courts in this state.—December 24, 1824.
- (19) An Act to regulate the sale of slaves by constables.—December 24, 1824.
- (20) An Act to regulate pleadings at common law.—December 24, 1824.
- (21) An Act giving additional remedy against constables.—December 24, 1824.
- (22) An Act explanatory of, and supplemental to, the act to establish the bank of the state of Alabama.—December 24, 1824.
- (23) An Act to provide for the payment of the interest on the loan obtained for the use of the state.—December 24, 1824.
- (24) An Act to provide for the transfer of stock issued by the state, and for the renewal of lost certificates thereof.—December 24, 1824.

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| 1824: (25) | An Act to provide for the payment of slaves executed in pursuance of law.—December 24, 1824. |
| (26) | An Act supplementary to, and amendatory of, the laws now in force regulating the appointment of auctioneers and sales at auction.—December 24, 1824. |
| (27) | An Act to alter the time of appointing overseers of roads. December 24, 1824. |
| (28) | An Act for the more effectual distribution of the journals of the senate, and of the house of representatives.—December 24, 1824. |
| (29) | An Act to amend the attachment laws of this state.—December 25, 1824. |
| (30) | An Act to amend the first section of an act entitled "An Act amendatory to the laws now in force for the relief of insolvent debtors," passed June 15th, 1821.—December 25, 1824. |
| (31) | An Act relative to the securities of judges of county courts.—December 25, 1824. |
| (32) | An Act to raise a revenue for the support of government, until otherwise provided for by law.—December 25, 1824. |
| (33) | An Act to prevent the commission of trespasses on the lands vested in the trustees of the university of Alabama, and for other purposes.—December 25, 1824. |
| (34) | An Act giving a lien on vessels in certain cases.—December 25, 1824. |
| 1825: (1) | An Act to authorize the appointment of a clerk of the supreme court, and for other purposes.—December 31, 1825. |
| 1826: (1) | An Act establishing, and permanently locating, the seat of government for the state of Alabama, pursuant to the twenty-ninth section of the third article of the constitution.—January, 1826. |
| (2) | An Act to amend the charter of the bank of the state of Alabama.—January 2, 1826. |
| (3) | An Act the more effectually to prevent trading with slaves, and for other purposes.—January 2, 1826. |
| (4) | An Act to compensate county court clerks for paying printers' fees for publishing the appraisement of certain strays.—January 2, 1826. |
| (5) | An Act to prohibit the further granting licenses for gaming-tables.—January 4, 1826. |
| (6) | An Act to require security upon granting a <i>supersedeas</i> .—January 4, 1826. |
| (7) | An Act to alter and amend the several laws now in force in this state, to suppress the evil practice of duelling.—January 7, 1826. |
| (8) | An Act the better to organize the militia of the counties of Covington and Dale.—January 7, 1826. |
| (9) | An Act providing for the registration of deeds, grants, &c.—January 9, 1826. |
| (10) | An Act to regulate elections.—January 9, 1826. |
| (11) | An Act to alter the manner of electing major and brigadier generals.—January 10, 1826. |

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1826: (12)	An Act to regulate the navigation of certain rivers in this state by steam-boats.—January 12, 1826.
(13)	An Act to repeal in part, and amend an act entitled "An Act restricting officers from taking commission on costs collected by them on executions," passed December 31, 1823.—January 12, 1826.
(14)	An Act for the adjustment of outstanding accounts, and to compel the payment into the treasury of moneys heretofore and now detained by public defaulters, and which may hereafter be detained.—January 12, 1826.
(15)	An Act to amend the act entitled "An Act regulating judicial proceedings, and for other purposes."—January 12, 1826.
(16)	An Act to provide for reviving actions of trespass.—January 12, 1826.
(17)	An Act the better to secure money in the hands of clerks, sheriffs, and coroners.—January 12, 1826.
(18)	An Act to extend the time for appointing overseers of roads, and apportioners of hands in this state, and for other purposes.—January 12, 1826.
(19)	An Act to amend an act entitled "An Act to regulate the licensing of physicians to practise, and for other purposes therein named," approved December 22, 1823.—January 12, 1826.
(20)	An Act to alter the times of holding company courts martial.—January 12, 1826.
(21)	An Act to provide against an unnecessary detention of grand juries, and for other purposes.—January 12, 1826.
(22)	An Act to provide a speedy remedy against the obligors in injunction bonds.—January 12, 1826.
(23)	An Act to amend an act entitled "An Act to prevent immoral and disorderly conduct at places of religious worship."—January 12, 1826.
(24)	An Act to authorize clerks and magistrates to collect costs in certain cases.—January 13, 1826.
(25)	An Act to authorize clerks of the county courts to administer oaths in certain cases.—January 13, 1826.
(26)	An Act to change the time of selling property levied upon by execution.—January 13, 1826.
(27)	An Act to exempt invalids from paying poll-tax.—January 13, 1826.
(28)	An Act to compel those making salt-petre in this state, to enclose in their works.—January 13, 1826.
(29)	An Act better to secure the revenue arising from licenses granted to tavern keepers and others.—January 13, 1826.
(30)	An Act for the better selecting, drawing, and summoning jurors.—January 14, 1826.
(31)	An Act to authorize the judges of the circuit courts in certain cases, to order juries to be empannelled.—January 14, 1826.
(32)	An Act to amend the laws now in force in relation to the duties of the county treasurers of this state.—January 14, 1826.

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| 1826: (33) | An Act to repeal in part and amend an act entitled "An Act for the punishment of malicious mischief," passed 17th December, 1821.—January 14, 1826. |
| (34) | An Act to authorize sheriffs to serve notices.—January 14, 1826. |
| (35) | An Act to amend an act entitled "An Act concerning dower."—January 14, 1826. |
| (36) | An Act to fix the salary of the president of the bank of the state of Alabama, and for other purposes.—January 14, 1826. |
| (37) | An Act to provide for the trial of officers in the militia of this state, and for other purposes.—January 14, 1826. |
| (38) | An Act requiring the judges of the circuit courts to alternate, and for other purposes.—January 14, 1826. |
| (39) | An Act to provide for holding two terms of the supreme court, and for other purposes.—January 14, 1826. |
| (40) | An Act to compensate witnesses attending magistrates' courts.—December 15, 1826. |
| (41) | An Act prescribing the punishment of slaves, and free persons of color, for the commission of the crime of manslaughter, on other slaves, or free persons of color. December 30, 1826. |
| (42) | An Act to amend the laws now in force for the punishment of malicious mischief.—December 30, 1826. |
| 1827: (1) | An Act to divide the forty-second regiment of the militia of this state.—January 1, 1827. |
| (2) | An Act to divide the thirty-sixth regiment of Alabama militia.—January 1, 1827. |
| (3) | Joint Resolution explanatory of the third section of an act entitled "An Act to fix the salary of the president of the bank of the state of Alabama, and for other purposes.—January 3, 1827. |
| (4) | An Act to provide for the distribution of the public arms among the different volunteer corps in this state.—January 4, 1827. |
| (5) | An Act supplementary to an act to establish a state university.—January 5, 1827. |
| (6) | An Act to alter the mode of appointing assessors and tax-collectors, and for other purposes.—January 5, 1827. |
| (7) | An Act directing in what manner and in what courts, suits may be brought against the state of Alabama. January 6, 1827. |
| (8) | An Act to amend an act to establish the bank of the state of Alabama, approved December 20th, 1823.—January 9, 1827. |
| (9) | An Act explanatory of an act entitled "An Act to provide for the election of justices of the peace and constables," passed December 31, 1822.—January 10, 1827. |
| (10) | An Act to extend the civil and criminal jurisdiction of this state over so much of the Creek nation as was ceded under the treaty of the Indian springs of 1825, within the chartered limits of the state of Alabama. January 11, 1827. |
| (11) | An Act to prevent the Creek Indians from hunting and |

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- trapping within the settled limits of this state.—January 11, 1827.
- 1827: (12) An Act amendatory of the laws now in force on the subject of bail in civil cases.—January 12, 1827.
- (13) An Act to pay officers for taking prisoners from one county to another in this state.—January 12, 1827.
- (14) An Act making it the duty of the comptroller of public accounts to lay before both houses of the general assembly, annually, in the first week of its session, a fair expose of the disbursements from the contingent fund. January 12, 1827.
- (15) An Act to amend an act entitled “An Act for the more effectual preservation of personal liberty.”—January 12, 1827.
- (16) An Act to reduce into one, the several acts concerning roads, bridges, ferries, and highways.—January 12, 1827.
- (17) An Act to exempt the directors of the state bank from certain public duties.—January 13, 1827.
- (18) An Act more effectually to protect sheriffs, coroners, and constables, in the discharge of their duties.—January 13, 1827.
- (19) An Act to raise a revenue for the support of government, until otherwise altered by law.—January 13, 1827.
- (20) An Act to compel plaintiffs to give security for costs in certain cases.—January 13, 1827.
- (21) An Act further to relieve insolvent debtors, and the better to secure the rights of creditors.—January 13, 1827.
- (22) Resolution authorizing the money of the university, now in the treasury, to be vested in state stock, and for other purposes.—January 13, 1827.
- (23) Resolutions relative to the militia laws of this state. January 13, 1827.
- (24) An Act relative to the duties of grand juries.—December 3, 1827.
- (25) An Act to provide for the arranging, filing, and preservation of the papers relating to unfinished business of each session of the legislature.—December 13, 1827.
- (26) An Act better to secure the benefit of the laws exempting certain property from execution, to poor families of this state.—December 13, 1827.
- (27) An Act prescribing the mode of commencing the contest of certain elections, and of procuring evidence therein. December 14, 1827.
- (28) An act to prevent the abatement of suits in certain cases. December 17, 1827.
- (29) An Act to revive and continue in force an act entitled “An Act to provide for the choosing electors of president and vice president of the United States,” passed December 26th, 1823. — December 17, 1827.
- (30) An Act to compel solicitors to reside in their respective circuits.—December 17, 1827.
- (31) An Act to divide the twenty-second regiment of the militia of this state.—December 20, 1827.
- (32) An Act supplementary to an act entitled “An Act con-

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- cerning executions and sales by sheriffs, and for other purposes," passed December 20th, 1820.—December 20, 1827.
- 1827: (33) An Act to amend an act entitled "An Act excluding from suffrage, serving as jurors, and holding offices, such persons as may be convicted of bribery, forgery, and other high crimes and misdemeanors.—December 20, 1827.
- (34) An Act to amend an act to authorize clerks and magistrates to collect costs in certain cases.—December 20, 1827.
- (35) Joint Resolution requiring the comptroller of public accounts to furnish the tax-collectors and county court clerks with a certified copy of the revenue laws of this state.—December 24, 1827.
- (36) An Act to give justices of the peace jurisdiction of certain contracts therein named.—December 26, 1827.
- (37) An Act relative to off-sets before justices of the peace, and for other purposes.—December 28, 1827.
- (38) An Act to repeal in part an act passed twenty-seventh December, 1814.—December 31, 1827.
- 1828: (1) An Act concerning the estates of deceased persons.—January 4, 1828.
- (2) An Act to extend to St. Clair and Shelby counties concurrent civil and criminal jurisdiction with Autauga county in the Creek nation.—January 9, 1828.
- (3) An Act to form a seventh judicial circuit.—January 9, 1828.
- (4) An Act to amend an act entitled "An Act to provide for the printing of the laws and journals, and for other purposes," passed 25th December, 1822.—January 10, 1828.
- (5) An Act to regulate the inspection of tobacco in this state. January 10, 1828.
- (6) An Act to repeal so much of the 3d section of an act entitled "An Act to reduce the expenses of the general assembly, and for other purposes," passed at Cahawba, the 15th day of June, 1821, as is herein specified.—January 10, 1828.
- (7) An Act more effectually to prevent frauds and fraudulent conveyances, and for other purposes.—January 11, 1828.
- (8) An Act to increase the capital of the bank of the state of Alabama.—January 12, 1828.
- (9) An Act to apportion the representatives among the several counties in this state, and to divide the state into senatorial districts, according to the late census.—January 12, 1828.
- (10) An act concerning the attendance of jurors.—January 12, 1828.
- (11) An Act to amend an act entitled "An Act to divide the state into districts for electing representatives to congress," passed December 21, 1822.—January 12, 1828.
- (12) An Act to authorize the commissioners of revenue and

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- roads of Mobile county to levy a special tax, and for other purposes.—January 12, 1828.
- (13) An Act to authorize and require the secretary of state to procure and distribute to each county in this state, one set of weights and measures.—January 12, 1828.
- (14) Joint resolution declaring the expiration of the office of the present trustees of the university of the state of Alabama.—January 12, 1828.
- (15) An Act further to amend the charter of the bank of the state of Alabama.—January 14, 1828.
- (16) An Act to provide for the transfer of stock issued by the state, and for the renewal of lost certificates thereof.—January 15, 1828.
- (17) An Act to provide for the more speedy collection of debts due the bank of the state of Alabama, in certain cases. January 15, 1828.
- (18) An Act supplementary to an act entitled "An Act to amend an act to establish the bank of the state of Alabama," approved December 20th, 1823.—January 15, 1828.
- (19) An act to provide for reports of the decisions of the supreme court.—January 15, 1828.
- (20) An act to establish the 52d regiment of Alabama militia. January 15, 1828.
- (21) An Act to alter the times of holding company courts martial.—January 15, 1828.
- (22) An Act to authorize the governor to cause bonds taken for public arms to be renewed.—January 15, 1828.
- (23) An Act relative to volunteer companies in the militia of this state, and for other purposes.—January 15, 1828.
- (24) An Act concerning the duties of clerks of the county courts and other officers.—January 15, 1828.
- (25) An Act regulating the duties of attorneys at law, and for other purposes.—January 15, 1828.
- (26) An Act to authorize the sales of sixteenth sections, and for other purposes.—January 15, 1828.
- (27) An Act for the further relief of securities.—January 15, 1828.
- (28) An Act declaring the effects of notarial protests.—January 15, 1828.
- (29) An act regulating judicial proceedings.—January 15, 1828.
- (30) An Act defining the liability of endorsers, and for other purposes.—January 15, 1828.
- (31) An Act better to regulate judicial proceedings.—January 15, 1828.
- (32) An Act to provide the clerks of the several counties in this state, with copies of the acts of the present and each subsequent congress of the United States.—January 15, 1828.
- (33) An Act providing for the payment of solicitors for prosecuting to conviction, slaves charged with capital offences.—January 15, 1828.
- (34) An Act relative to the satisfaction of executions.—January 15, 1828.

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- 1828: (35) An Act concerning the registration of deeds and patents.
January 15, 1828.
- (36) An Act to amend an act entitled "An Act respecting bail in civil cases," passed 9th December, 1823.—January 15, 1828.
- (37) An Act to amend the law in relation to original attachments.—January 15, 1828.
- (38) An Act the better to provide for the trial of the right of property, and for other purposes.—January 15, 1828.
- (39) An Act explanatory of the eleventh and twenty-fourth sections of an act to reduce into one the several acts concerning roads, bridges, ferries, and highways, approved January 12th, 1827.—January 15, 1828.
- (40) An Act to revive in part a certain act therein specified.
January 15, 1828.
- (41) An Act amendatory of the several acts heretofore passed in relation to the public revenue.—January 15, 1828.
- (42) An Act to amend an act to regulate the licensing of physicians to practise, and for other purposes, approved December 22, 1823.—January 15, 1828.
- (43) Joint Resolution authorizing a further investment of university funds.—January 15, 1828.
- (44) An Act explaining the true intent and meaning of two acts therein mentioned.—December 11, 1828.
- (45) An Act to authorize clerks of the circuit courts to take bonds of sheriffs, assessors, tax-collectors, and coroners, in certain cases.—December 13, 1828.
- (46) An Act for the relief of sheriffs.—December 20, 1828.
- (47) An Act relating to penal statutes.—December 24, 1828.
- (48) An Act to authorize the judge of the county court and commissioners of roads and revenue, to fill vacancies in certain cases.—1828.
- 1829: (1) An Act to increase the salary of the state printer.—January 10, 1829.
- (2) An Act to reduce into one the several acts giving fees to justices of the peace and constables, and for other purposes.—January 14, 1829.
- (3) An Act prohibiting certain persons from exercising the powers of justice of the peace and constable, of the state.
January 15, 1829.
- (4) An Act to legalize registering certain deeds or conveyances of lands in this state.—January 24, 1829.
- (5) An Act prescribing the duties of sheriffs and returning officers in holding elections, and returning the votes of all persons voting on proposed alterations of the constitution of the state of Alabama.—January 26, 1829.
- (6) An Act for the relief of sheriffs and other officers.—January 26, 1829.
- (7) An Act the better to secure the collection of the state revenue.—January 26, 1829.
- (8) An Act to exempt certain persons from performing military duty in this state, therein named.—January 27, 1829.
- (9) An Act concerning the fees of clerks and sheriffs.—January 28, 1829.

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| 1829: (10) | An Act in relation to the appointment and duties of trustees.—January 28, 1829. |
| (11) | An Act to authorize the employment of an additional clerk for the bank of the state of Alabama.—January 29, 1829. |
| (12) | An Act to amend an act entitled "An Act to reduce into one the several acts concerning roads, bridges, ferries, and highways," passed January 12, 1827.—January 29, 1829. |
| (13) | An Act to amend an act entitled "An Act to authorize the sales of sixteenth sections, and for other purposes."—January 29, 1829. |
| (14) | An Act to prevent extortion by public officers, and for other purposes.—January 29, 1829. |
| (15) | An Act to extend the jurisdiction of the state of Alabama, over the Creek nation.—January 29, 1829. |
| (16) | An Act to divide the twenty-first regiment of the militia of this state, and for other purposes.—January 29, 1829. |
| (17) | An Act to repeal in part, and amend an act entitled "An Act defining the liability of endorsers, and for other purposes," approved January 15th, 1828.—January 30, 1829. |
| (18) | An Act amendatory of the laws of this state, on the subject of elections of members of the general assembly.—December 11, 1829. |
| (19) | An Act concerning the dismissal of suits at common law.—December 29, 1829. |
| 1830: (1) | An Act amendatory of the laws of this state on the subject of confining prisoners committed upon process from courts of the United States.—January 7, 1830. |
| (2) | An Act to give the circuit courts of this state power to render judgments final against the security in writs of error bond.—January 9, 1830. |
| (3) | An Act to authorize the courts of this state to render final judgment against the security of non-residents for costs.—January 9, 1830. |
| (4) | An Act to authorize certain persons to practise law in this state.—January 13, 1830. |
| (5) | Joint Resolution, requiring the offices of the comptroller and treasurer to be examined annually.—January 13, 1830. |
| (6) | An Act to prevent the evil practice of betting on elections.—January 14, 1830. |
| (7) | An Act making permanent the act prescribing the duties of sheriffs and returning officers, in holding elections, and returning the votes of all persons voting on proposed alterations of the constitution of the state of Alabama, approved January 26th, 1829.—January 14, 1830. |
| (8) | An Act to regulate certain proceedings of county courts.—January 14, 1830. |
| (9) | An Act to amend an act entitled "An Act to regulate the licensing of Physicians to practise, and for other purposes therein named," passed December 23, 1823.—January 15, 1830. |

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- 1830: (10) An Act supplemental to an act passed the 14th of December, 1827, prescribing the mode of contesting elections. January 15, 1830.
- (11) An Act to extend the powers of the county and orphans' court in certain cases, and for other purposes.—January 16, 1830.
- (12) An Act to regulate the landing of goods by steam-boats and barges, and for other purposes.—January 16, 1830.
- (13) An Act supplementary to an act passed the 15th day of January, 1828, entitled "An Act to authorize the sales of sixteenth sections, and for other purposes."—January 16, 1830.
- (14) An Act to regulate proceedings in certain actions of detinue.—January 16, 1830.
- (15) Joint Resolution, ratifying the proposed amendments to the constitution of the state of Alabama, so as to limit the tenure of the judges' offices to six years.—January 16, 1830.
- (16) An Act for the relief of securities in bank.—January 19, 1830.
- (17) An Act more effectually to prevent the circulation of what are termed "change bills or tickets."—January 20, 1830.
- (18) An Act the better to provide for the examination of the offices of the clerks of the circuit and county courts of this state.—January 20, 1830.
- (19) An Act regulating the duties of county treasurer.—January 20, 1830.
- (20) An Act to furnish each commissioner of revenue and roads with the statutes of this state.—December 15, 1830.
- (21) An Act to regulate trials before justices of the peace.—December 31, 1830.
- (22) An Act to amend the act regulating judicial proceedings. December 31, 1830.
- (23) Joint Resolution, requiring the secretary of state, comptroller of public accounts, or state treasurer, to administer the oaths of office to the members of the general assembly.—December 31, 1830.
- 1831: (1) An Act relating to the acknowledgment of deeds, and relinquishment of dower.—January 6, 1831.
- (2) An Act more effectually to secure trials in capital cases by impartial jurors.—January 10, 1831.
- (3) An Act authorizing and legalizing the registration of deeds not heretofore recorded in the legal time.—January 10, 1831.
- (4) An Act to amend an act entitled "An Act to amend an act to regulate the licensing physicians to practice, and for other purposes," passed the 15th day of January, 1830.—January 12, 1831.
- (5) Joint Resolution providing for the distribution of the laws of the United States.—January 12, 1831.
- (6) An Act in part to amend an act entitled "An Act to revise, consolidate, and amend the several acts relative to the militia of this state," passed December 31, 1822. January 13, 1831.

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| 1831: | (7) An Act to amend an act in relation to capital crimes committed by slaves and free persons of color.—January 13, 1831. |
| | (8) An Act to divide the twentieth regiment of the militia of this state, and for other purposes.—January 13, 1831. |
| | (9) An Act to continue in force and amend an act entitled "An Act to provide for reporting the decisions of the supreme court."—January 15, 1831. |
| | (10) An Act to prohibit the clerks of the circuit and county courts of Tuskaloosa county, from taxing in the bill of costs, a county tax on judgments rendered in favor of the bank of the state of Alabama.—January 15, 1831. |
| | (11) Joint Resolution to authorize the secretary of state to procure books and stationery for the use of the state departments, and general assembly.—January 15, 1831. |
| | (12) Joint Resolution making it the duty of the secretary of state to distribute to each regiment, the abstracts of infantry tactics now in his office.—January 15, 1831. |
| | (13) An Act to authorize the transfer of causes from the county courts to the circuit courts in particular cases.—December 20, 1831. |
| | (14) An Act to exempt from taxation the several churches in the state of Alabama, dedicated to religious worship. December 28, 1831. |
| | (15) An Act to form a new regiment in the county of Pickens. December 28, 1831. |
| | (16) Joint Resolution in relation to white settlers on Indian territory, and state jurisdiction.—December 31, 1831. |
| 1832: | (1) An Act amendatory to the several acts concerning witnesses.—January 3, 1832. |
| | (2) An Act to amend an act entitled "An Act supplementary to the laws respecting garnishment," approved December 17, 1823.—January 4, 1832. |
| | (3) An Act to amend an act entitled "An Act for the better regulation of judicial proceedings," passed February 7, 1818, and for other purposes.—January 5, 1832. |
| | (4) An Act to provide for the more speedy trial of slaves and free persons of color.—January 7, 1832. |
| | (5) An Act to divide the forty sixth regiment of the militia of this state, composed of the counties of Covington and Dale.—January 13, 1832. |
| | (6) An Act to organize a separate supreme court.—January 14, 1832. |
| | (7) An Act to extend the jurisdiction of the state of Alabama over the territory according to the geographical boundaries within the limits of said state, and for other purposes.—January 16, 1832. |
| | (8) An Act to prevent the introduction of slaves into Alabama, and for other purposes.—January 16, 1832. |
| | (9) An Act concerning the registration of deeds and conveyances.—January 18, 1832. |
| | (10) An Act to amend an act to authorize the sales of sixteenth sections, and for other purposes, passed January 15, 1828.—January 18, 1832. |

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| 1832: (11) | An Act to limit actions against securities of officers.
January 18, 1832. |
| (12) | An Act to divide the twelfth regiment of the militia of this state.—January 19, 1832. |
| (13) | An Act to amend an act entitled "An Act to raise a revenue for the support of government until otherwise altered by law," passed the 13th of January, 1827.
January 20, 1832. |
| (14) | An Act to establish a branch of the bank of the state of Alabama.—January 21, 1832. |
| (15) | An Act relating to the alternating of the judges of the circuit courts of this state.—January 21, 1832. |
| (16) | An Act to repeal in part an act entitled "An Act for the government of gin-holders," passed November the 16th, 1818.—January 21, 1832. |
| (17) | An Act to exempt from taxation all incorporated academies in this state.—January 21, 1832. |
| (18) | An Act to authorize the commissioners' courts of roads and revenue, to grant private ways in certain cases.
January 21, 1832. |
| (19) | An Act more effectually to secure to militia officers the infantry tactics received by this state from the general government.—January 21, 1832. |
| (20) | An Act amendatory to the laws concerning divorce.—January 21, 1832. |
| (21) | An Act to reduce the size of the several divisions and brigades of the militia of this state.—January 21, 1832. |
| (22) | An Act to alter and amend the several laws of this state now in force, providing for the election of electors of president and vice-president of the United States.—November 8, 1832. |
| (23) | An Act to repeal in part an act approved January 21, 1832, entitled "An Act relating to the alternating of the judges of the circuit courts of this state."—November 10, 1832. |
| (24) | An Act to establish a branch of the bank of the state of Alabama, in the Tennessee Valley.—November 16, 1832. |
| (25) | An Act for the accommodation of the purchasers of sixteenth sections and donated lands.—November 17, 1832. |
| (26) | An Act to establish a branch of the bank of the state of Alabama, in the city of Mobile.—December 4, 1832. |
| (27) | An Act to amend and repeal an act entitled "An Act to prevent the introduction of slaves into Alabama, and for other purposes," approved January 16th, 1832.—December 4, 1832. |
| (28) | An Act to repeal in part the several acts now in force, in relation to the practice of medicine.—December 12, 1832. |
| (29) | An Act to increase the capital stock of the branch of the bank of the state of Alabama, at the town of Montgomery.
December 12, 1832. |
| (30) | An Act to repeal in part and amend "An Act to revise, consolidate, and amend the several acts relative to justices of the peace and constables," passed December 27th, 1814.—December 15, 1832. |

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1832: (31)	An Act to authorize the judges of the supreme court to grant certain writs therein mentioned.—December 15, 1832.
(32)	An Act more particularly defining the power of the commissioners of roads and revenue, in certain cases therein specified.—December 18, 1832.
(33)	An Act further to provide for the election of electors of president and vice-president of the United States.—December 21, 1832.
(34)	An Act to authorize the county courts of roads and revenue to change the state roads running through their respective counties.—December 21, 1832.
(35)	An Act to reduce the damages on bills of exchange, purchased by the bank of the state of Alabama, or either of its branches.—December 21, 1832.
(36)	An Act to repeal in part an act entitled "An Act to raise a revenue for the support of government, until otherwise altered by law," passed January 20, 1832.—December 21, 1832.
(37)	An Act for the relief of witnesses and jurors.—December 21, 1832.
(38)	An Act to amend an act entitled "An Act defining the liability of endorsers, and for other purposes," approved January 15th, 1828.—December 21, 1832.
(39)	An Act to amend an act entitled "An Act to extend the powers of the county and orphans' court in certain cases, and for other purposes," approved January 16th, 1830.—December 21, 1832.
(40)	An Act to enable sheriffs and coroners to take recognizances in certain cases therein named.—December 28, 1832.
1833: (1)	An Act to educate children in certain cases.—January 1, 1833.
(2)	An Act more particularly to define the duties of the secretary of state, in relation to the arrangement and printing of the acts of each session of the general assembly. January 3, 1833.
(3)	An Act to amend "An Act to incorporate and empower religious societies of every denomination to hold real estate."—January 5, 1833.
(4)	An Act to revive in part and amend "An Act to allow trustees of the state university pay for their services," passed December 26th, 1822.—January 5, 1833.
(5)	An Act to repeal in part an act therein mentioned.—January 5, 1833.
(6)	An Act regulating the time of service of state printer.—January 8, 1833.
(7)	An Act to prevent frauds in the sale of oil, and for other purposes.—January 9, 1833.
(8)	An Act to provide for the transfer of stock issued by the state, and for the renewal of lost certificates thereof.—January 9, 1833.
(9)	An Act to provide for legitimating bastard children, and to authorize the change of names.—January 9, 1833.
(10)	An Act to provide for the translating and recording of the British, French, and Spanish records of this state.—January 9, 1833.

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| 1833: (11) | An Act to divide the state into districts, for electing representatives to congress.—January 10, 1833. |
| (12) | An Act to amend the several acts relating to the sixteenth sections.—January 10, 1833. |
| (13) | An Act to simplify <i>scire facias</i> in criminal cases, and for other purposes.—January 10, 1833. |
| (14) | An Act to provide for the summoning of juries for the county courts.—January 10, 1833. |
| (15) | An Act providing for the maintenance and education of certain persons therein named.—January 10, 1833. |
| (16) | An Act to repeal in part and amend "An Act to regulate the rate of interest," passed December 17, 1819.—January 10, 1833. |
| (17) | An Act to require jurors to be drawn in certain cases.—January 10, 1833. |
| (18) | An Act to revise, amend, amplify, and repeal in part, certain acts contained in the new digest of this state.—January 10, 1833. |
| (19) | An Act for the reduction of the taxes.—January 11, 1833. |
| (20) | An Act to provide for the appointment of commissioners without this state to take testimony, &c.—Jan. 11, 1833. |
| (21) | An Act to alter and establish the judicial circuits of this state.—January 11, 1833. |
| (22) | An Act concerning attachments.—January 12, 1833. |
| (23) | An Act to fix the salary of the president of the bank of the state of Alabama, and for other purposes.—January 12, 1833. |
| (24) | An Act to regulate the weighing of cotton in the city of Mobile, and for other purposes.—January 12, 1833. |
| (25) | An Act explanatory of the liability of persons to work on roads.—January 12, 1833. |
| (26) | An Act to amend the charter of the bank of the state of Alabama.—January 12, 1833. |
| (27) | An Act to provide for the settlement of the estates of deceased persons, in certain cases therein named.—January 12, 1833. |
| (28) | An Act to exempt certain property from execution.—January 12, 1833. |
| (29) | An Act to amend the militia law, under the head of court-martial.—January 12, 1833. |
| (30) | An Act to preclude from office certain persons therein named.—January 12, 1833. |
| (31) | An Act relative to the reporter of the decisions of the supreme court.—January 12, 1833. |
| (32) | An Act to provide for the appropriation of the net proceeds of the funds arising from the sale of the sixteenth sections.—January 12, 1833. |
| (33) | An Act requiring the governor to reside at the seat of government.—January 12, 1833. |
| (34) | An Act for the relief of purchasers of sixteenth sections.—January 12, 1833. |
| (35) | An Act to explain in part and amend an act entitled "An Act concerning the assignment of bonds, notes, &c. and for other purposes," passed December 18, 1812.—January 12, 1833. |

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- 1833: (36) An Act to provide for the examination of the bank of the state of Alabama, and its several branches.—January 12, 1833.
- (37) An Act to authorize the judges of the supreme court to hold adjourned terms.—January 12, 1833.
- (38) An Act to distribute the funds arising from the sale of the sixteenth sections.—January 12, 1833.
- (39) An Act to provide for taking depositions of judges of the circuit and supreme courts of the state of Alabama, and for other purposes therein named.—January 12, 1833.
- (40) An Act prescribing the duties of coroners.—January 12, 1833.
- (41) An Act the better to secure the funds of the university of Alabama.—January 12, 1833.
- (42) An Act regulating the compensation of jailors for victualing slaves confined in jail, and for other purposes.—January 12, 1833.
- (43) An Act to adopt, print, bind, and distribute the new digest compiled by John G. Aikin, Esq. and for other purposes. January —, 1833.
- (44) An Act concerning escheats.—December 16, 1833.
- (45) An Act to authorize town constables to execute process issued by justices of the peace.—December 7, 1833.
- 1834: (1) An Act to authorize the president of the senate and speaker of the house of representatives, to issue certificates of election to the president and directors of the bank of the state of Alabama and the several branches thereof. January 16, 1834.
- (2) An act to amend the charters of the branches of the bank of the state of Alabama at Decatur and Montgomery. January 16, 1834.
- (3) An Act to amend the charter of the branch of the bank of the state of Alabama at Mobile, and also that of the bank of Mobile.—January 16, 1834.
- (4) An Act to amend the charters of the several branch banks in this state.—January 17, 1834.
- (5) An Act to regulate the mode of computing interest in certain cases.—January 18, 1834.
- (6) An Act to prevent directors of banks from acting as attorneys for banks.—January 18, 1834.
- (7) An Act to fix the salaries of the several bank officers.—January 18, 1834.
- (8) An Act to amend the charter of the bank of the state of Alabama, and its several branches.—January 18, 1834.
- (9) An Act to reduce the tax fees of the attorneys of the bank of the state of Alabama, and its branches.—January 18, 1834.
- (10) An Act to vacate the seat of any president or director in the bank of the state of Alabama, or any of its branches. December 30, 1834.
- (11) An Act to increase the capital stock of the bank of Mobile, and to extend the charter, and supplemental to the act entitled "An Act to establish a bank in the town of Mobile," passed 20th November, 1818.—January 16, 1834.

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- 1834: (12) An Act to provide a more summary mode of collecting money from clerks.—January 16, 1834.
- (13) An Act declaratory of the law concerning contempts of court.—January 17, 1834.
- (14) An Act to prevent the imprisonment of females.—January 18, 1834.
- (15) An Act to fix the fees of county surveyors.—January 18, 1834.
- (16) An Act concerning evidence.—January 17, 1834.
- (17) An Act to amend the laws in relation to constables.—January 13, 1834.
- (18) An Act regulating the mode of taking constable's bonds.—January 1, 1834.
- (19) An Act for the relief of master builders and mechanics in the state of Alabama.—January 1, 1834.
- (20) An Act to amend the road laws.—January 17, 1834.
- (21) An Act for the better regulation of roads.—January 17, 1834.
- (22) An Act to repeal in part and amend the law relating to apportionment of hands to work on public roads.—January 18, 1834.
- (23) An Act to fix the salary of the solicitor of the first judicial circuit.—January 18, 1834.
- (24) An Act to distribute the funds arising from the sale of the sixteenth sections in the Tennessee valley.—January 17, 1834.
- (25) An Act to authorize the judges of the county courts to emancipate slaves.—January 17, 1834.
- (26) An Act to permit the selling of beer and cider.—December 30, 1834.
- (27) An Act to exempt revolutionary soldiers from paying taxes.—January 17, 1834.
- (28) An Act to repeal in part an act entitled "An Act to regulate the rate of interest," passed December 17, 1819.—January 17, 1834.
- 1835: (1) An Act to amend an act passed January 12th, 1833, entitled "An Act concerning attachments."—January 10, 1835.
- (2) An Act to authorize lawyers residing in the state of Mississippi to practice law in the circuit and county courts of this state.—January 10, 1835.
- (3) An Act to establish a branch of the bank of the state of Alabama at Huntsville, in the county of Madison, and to increase the capital stock of the branch of the bank of the state of Alabama at Decatur.—January 10, 1835.
- (4) An Act to authorize the bank of the state of Alabama and its several branches to issue post notes.—January 2, 1835.
- (5) An Act to amend an act entitled "An Act to establish a branch of the bank of the state of Alabama at Decatur."—January 5, 1835.
- (6) An Act to create a sinking fund for the ultimate redemption of the state bonds.—January 10, 1835.
- (7) An Act to amend the charter of the bank of the state of

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- Alabama and the several branch banks thereof.—January 10, 1835.
- 1835: (8) An Act to be entitled an act to amend the charters of the branches of the bank of the state of Alabama, at Huntsville, Decatur and Montgomery.—December 21, 1835.
- (9) An Act to prohibit the circulation of certain bills and notes therein mentioned, and for other purposes.—January 10, 1835.
- (10) An Act to amend the charter of the bank of Mobile, and to authorize the taking the sum of seven hundred and forty thousand dollars by the state of the stock of said bank.—January 10, 1835.
- (11) An Act to amend the form of certain state stock.—December 18, 1835.
- (12) An Act to authorize the personal estate of deceased persons to be reserved from sale for a limited time.—January 2, 1835.
- (13) An Act to authorize the issuing of executions in certain cases, and for other purposes.—January 10, 1835.
- (14) An Act pointing out the mode of appointing inspectors of elections, and for other purposes.—January 9, 1835.
- (15) An Act in relation to suits of ejectment and demurrers.—January 10, 1835.
- (16) An Act in relation to suits against carriers by water.—January 10, 1835.
- (17) An Act more effectually to provide for the election of justices of the peace and constables.—January 10, 1835.
- (18) An Act in relation to writs of *ad quod damnum*.—January 10, 1835.
- (19) An Act to establish additional boards of physicians in the towns of Montgomery and Demopolis.—January 10, 1835.
- (20) An Act to amend the law in relation to tavern license.—January 10, 1835.
- (21) An Act to raise a revenue for the support of government, until otherwise altered by law.—January 10, 1835.
- (22) An Act to repeal in part and explain an Act entitled "An Act to raise a revenue for the support of government, until otherwise altered by law," approved January 13, 1827.—January 7, 1835.
- (23) An Act in relation to the duties of the judges of the county courts, and for other purposes.—January 10, 1835.
- (24) An Act to modify an act therein named.—December 7, 1835.
- 1836: (1) An Act to amend the laws in relation to original attachments.—January 9, 1836.
- (2) An Act to authorize lawyers residing in the state of Georgia to practice law in the circuit and county courts of this state.—December 23, 1836.
- (3) An Act to establish the salaries of the several officers of the bank of the state of Alabama and its branches.—January 9, 1836.
- (4) An Act to amend the charter of the branch of the bank of

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- the state of Alabama at Mobile, and for other purposes.
January 9, 1836.
- 1836: (5) An Act to increase the capital of the branch of the bank of the state of Alabama, at Huntsville, and for other purposes.—January 9, 1836.
- (6) An Act regulating the accommodations and liabilities of the president and directors of the state bank, and the branches of the bank of the state of Alabama at Huntsville, Decatur and Montgomery.—December 17, 1836.
- (7) An Act regulating the accommodations and liabilities of the president and directors of the branch of the bank of the state of Alabama at Mobile.—December 16, 1836.
- (8) An Act to authorize the governor to appoint three commissioners annually to examine the affairs of the bank of the state of Alabama at Tuscaloosa.—December 23, 1836.
- (9) An Act relative to the stock belonging to the state in the bank of Mobile.—December 23, 1836.
- (10) An Act to establish a bank in the city of Mobile.—January 8, 1836.
- (11) An Act to provide for the security of merchants, mechanics and others furnishing materials or stores to steamboats, or other water crafts in the state of Alabama.—January 1, 1836.
- (12) An Act to amend the law in relation to the certifying the proof of deeds and relinquishment of dower.—January 5, 1836.
- (13) An Act amendatory of the laws on the subject of dower. December 23, 1836.
- (14) An Act regulating the management of estates of minors and others under guardianship.—December 16, 1836.
- (15) An Act for the relief of the printer of the decisions of the supreme court, and for other purposes.—December 23, 1836.
- (16) An Act to appropriate a room in the capitol to the use of the judges of the supreme court.—January 8, 1836.
- (17) An Act further to regulate judicial proceedings.—January 5, 1836.
- (18) An Act to authorize the final decision of causes pending in the supreme court, in which the judges of the same are disqualified by interest, or any other cause.—January 9, 1836.
- (19) An Act for the relief of tenants in possession against dormant titles.—January 8, 1836.
- (20) An Act to amend the laws regulating judicial proceedings. December 23, 1836.
- (21) An Act to authorize an appeal in certain chancery cases. January 9, 1836.
- (22) An Act to increase the pay of jurors of the several counties therein named.—January 9, 1836.
- (23) An Act to authorize the judges of the supreme and county courts in this state to solemnize the rites of matrimony, and for other purposes.—January 9, 1836.
- (24) An Act to regulate patrol detachments, and to enforce

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	the performance of patrol duty in this state.—January 1, 1836.
1836: (25)	An Act to be entitled an act to amend and consolidate the laws on the subject of public roads.—December 23, 1836.
(26)	An Act to increase the salary of the governor of the state of Alabama.—December 23, 1836.
(27)	An Act to alter and amend the laws now in force fixing the compensation of the judges of the circuit and supreme courts.—December 23, 1836.
(28)	An Act to authorize the trustees of literary institutions to deposit their funds in the state bank and its branches. January 9, 1836.
(29)	An Act to fix and regulate the salvage allowed by law, for the securing of cotton and other articles of trade and merchandize found afloat in the rivers.—January 9, 1836.
(30)	An Act to amend the law in relation to sixteenth sections. January 9, 1836.
(31)	An Act to authorize the purchasers of any sixteenth section lands in this state to pay the purchase money in advance.—January 9, 1836.
(32)	An Act to mitigate the severity of the penal laws of Alabama.—January 9, 1836.
(33)	An Act to authorize the treasurer to receive that portion of the revenue of the United States allotted to this state.—December 16, 1836.
(34)	An Act to abolish direct taxation in this state.—January 9, 1836.
(35)	An Act to amend an act, approved January 9th, 1836, entitled "An Act to abolish direct taxation in this state."—December 23, 1836.
(36)	An Act to secure a more regular attendance of directors of the state bank and its several branches.—January 8, 1836.
(37)	An Act to amend the several acts now in force to prevent the evil practice of gaming and for other purposes. December 23, 1836.
1837: (1)	An Act to explain and amend the laws in relation to attachments.—December 23, 1837.
(2)	An Act to amend an act entitled "An Act to establish a branch of the bank of the state of Alabama at Huntsville, in the county of Madison, and to increase the capital stock of the branch of the bank of the state of Alabama at Decatur," passed January 10, 1835.—June 30, 1837.
(3)	An Act to regulate the commencement and prosecution of suits in certain cases.—June 30, 1837.
(4)	An Act to authorize the persons therein named to raise a loan in behalf of the state of Alabama, of two millions five hundred thousand dollars.—December 23, 1837.
(5)	An Act to extend the time of indebtedness to the bank of the state of Alabama and its branches, and legalizing the suspension of specie payments of the same, and for other purposes.—June 30, 1837.

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- 1837: (6) An Act supplemental to an act entitled "An Act to extend the time of indebtedness to the bank of the state of Alabama and its branches, and for other purposes," passed 30th June, 1837.—December 19, 1837.
- (7) An Act to alter and amend in part an act therein named. December 20, 1837.
- (8) An Act to suppress the use of bowie knives.—June 30, 1837.
- (9) An Act to protect the remains of the dead, and for other purposes.—December 14, 1837.
- (10) An Act to suppress mal-practice by factors, carriers and others.—December 19, 1837.
- (11) An Act to authorize guardians to remove the property of their wards in certain cases.—December 23, 1837.
- (12) An Act to prevent the institution of illegal and oppressive suits in the United States courts in this state.—June 30, 1837.
- (13) An Act to regulate certain judicial proceedings.—December 19, 1837.
- (14) An Act to be entitled an act more effectually to provide for discoveries in suits at common law.—December 23, 1837.
- (15) An Act to increase the pay of jurors in certain counties therein named.—December 21, 1837.
- (16) An Act to empower the judges of the county courts to make partition of lands.—June 29, 1837.
- (17) An Act to establish a medical board at the town of Irwinton, in the county of Barbour.—December 23, 1837.
- (18) An Act to require the several medical boards of this state to keep a seal of office, and for other purposes.—December 14, 1837.
- (19) An Act to enlarge the prison bounds in the different counties in this state.—June 30, 1837.
- (20) An Act to secure the fine from defaulters for working on public roads.—December 14, 1837.
- (21) An Act for the government of turnpike roads.—December 20, 1837.
- (22) An Act to revise and amend the laws in relation to schools and school lands.—December 25, 1837.
- (23) An Act authorizing the treasurer of the state to deposit the surplus revenue of the United States, allotted to Alabama, in the bank of the state and its branches. June 30, 1837.
- (24) An Act to amend the laws in force in relation to retailers of spirituous liquors.—December 23, 1837.
- (25) An Act the better to regulate the taxing of peddlers and shows.—December 23, 1837.
- (26) An Act to amend the laws in relation to the collection of taxes on real estate.—December 19, 1837.
- (27) An Act to extend the powers of the trustees of the university of Alabama, and for other purposes.—June 30, 1837.
- (28) An Act to be entitled an act for the benefit of the university of this state.—December 23, 1837.

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| 1837: (29) | An Act to regulate the compensation of witnesses in civil cases, and for other purposes.—December 23, 1837. |
| (30) | An Act to authorise the formation of limited partnerships. December 19, 1837. |
| 1839: (1) | An Act to abolish imprisonment for debt.—February 1, 1839. |
| (2) | An Act to reduce the number of directors of the state bank and the several branches.—January 17, 1839. |
| (3) | An Act to compensate the directors of the bank of the state of Alabama and its several branches.—February 2, 1839. |
| (4) | An Act the better to regulate the operation of the bank of the state of Alabama and its several branches.—February 2, 1839. |
| (5) | An Act for the better management of the state bank and its several branches.—February 1, 1839. |
| (6) | An Act to alter and amend the charter of the bank of the state of Alabama, and its several branches.—February 2, 1839. |
| (7) | An Act to provide for the payment of the interest on the state bonds by the state bank and the several branches. January 26, 1839. |
| (8) | An Act explanatory of an act therein mentioned.—February 2, 1839. |
| (9) | An Act to prohibit unlawful banking associations, and for other purposes.—February 2, 1839. |
| (10) | An Act to amend the law upon the probate of deeds. February 1, 1839. |
| (11) | An Act concerning deeds.—February 2, 1839. |
| (12) | An Act for the protection of the Muscle Shoals canal. February 1, 1839. |
| (13) | An Act to authorize the taking the depositions of attorneys, counsellors, and solicitors.—January 31, 1839. |
| (14) | An Act to amend an act now in force relating to the taking of depositions.—February 1, 1839. |
| (15) | An Act to regulate dower.—February 2, 1839. |
| (16) | An Act to abolish and establish certain election precincts therein mentioned.—February 2, 1839. |
| (17) | An Act to apportion the representatives among the several counties in this state, and to divide the state into senatorial districts, according to the late census.—February 2, 1839. |
| (18) | An Act to permit administrators, &c. to rent real estate, and for other purposes.—February 2, 1839. |
| (19) | An Act to authorize guardians of minors, idiots and lunatics, to receive and remove from this state any property to which such ward may be entitled, where both guardian and ward reside out of the state, or to remove the same from one county to another in this state, &c. February 2, 1839. |
| (20) | An Act to prevent surprise and injury to defendants in execution.—January 24, 1839. |
| (21) | Joint Resolutions in relation to the distribution of the decisions of the supreme court.—February 2, 1839. |

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| 1839: (22) | An Act to regulate judicial proceedings.—January 19, 1839. |
| (23) | An Act to amend judicial proceedings at common law in regard to suits against co-partners.—February 1, 1839. |
| (24) | An Act to abolish attorneys' fees in certain cases.—February 2, 1839. |
| (25) | An Act to organize and establish separate courts of chancery.—January 26, 1839. |
| (26) | An Act to increase the pay of jurors in the county of Jackson.—February 1, 1839. |
| (27) | An Act requiring justices of the peace to give bond and security.—January 30, 1839. |
| (28) | An Act concerning steam and horse mills.—February 2, 1839. |
| (29) | An Act to amend the patrol law.—February 2, 1839. |
| (30) | An Act to extend the powers of the courts of roads and revenue in the several counties of this state.—February 2, 1839. |
| (31) | An Act prescribing the mode of establishing and licensing toll-bridges, causeways and ferries, and defining the rights and liabilities of the owners thereof.—February 2, 1839. |
| (32) | An Act fixing the salaries of the secretary of state, the state treasurer, comptroller of public accounts and adjutant and inspector-general.—January 29, 1839. |
| (33) | An Act to protect the character of females from slanderous aspersions.—February 2, 1839. |
| (34) | An Act for the relief of sureties in certain cases.—February 1, 1839. |
| (35) | An Act for the better protection of slaves in certain cases. January 10, 1839. |
| (36) | An Act to amend the laws relating to absconding slaves. January 28, 1839. |
| (37) | An Act to repeal in part, and amend an act entitled "An Act to amend the laws in force in relation to retailers of spirituous liquors," approved December 23d, 1837.—February 1, 1839. |
| (38) | An Act to amend and consolidate the laws in relation to county treasurers.—January 19, 1839. |
| (39) | An Act to repeal in part and amend the militia laws of this state.—February 1, 1839. |
| (40) | An Act touching fines imposed by brigade courts martial.—February 2, 1839. |
| (41) | An Act to alter and amend the laws regulating the admission and practice of counsellors and attorneys at law. February 2, 1839. |
| 1840: (1) | Joint Resolutions in relation to the line between Georgia and the state of Alabama.—January 27, 1840. |
| (2) | An Act to amend the law in relation to garnishments.—February 5, 1840. |
| (3) | An Act to alter and amend the attachment law, so far as relates to the bank of the state of Alabama and its several branches.—February 3, 1840. |
| (4) | An Act to prohibit the president and directors of the state bank and its several branches from allowing the cashier, |

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- clerks, and tellers of said banks more than is now allowed by law.—February 5, 1840.
- 1840 : (5) An Act in relation to bonds given by the officers of the bank of the state of Alabama and its branches.—December 31, 1840.
- (6) An Act to change the manner of bringing suits on bills of exchange and negotiable paper.—February 3, 1840.
- (7) An Act as to endorsers and acceptors.—February 3, 1840.
- (8) An Act for the extension of debts due the bank of the state of Alabama and its several branches, the issuing of post notes and other purposes.—February 3, 1840.
- (9) An Act to prohibit foreign corporations from exercising banking privileges in the state of Alabama.—February 5, 1840.
- (10) An Act to amend an act entitled “An Act to provide for the security of merchants, mechanics and others, furnishing materials or stores to steam-boats or other water-craft in the state of Alabama,” approved January 9th, 1836.—February 5, 1840.
- (11) An Act to be entitled an act to enforce the duties of clerks of the circuit and county courts in this state.—February 1, 1840.
- (12) An Act in relation to clerk’s fees.—January 18, 1840.
- (13) An Act in relation to the issuing of executions.—February 5, 1840.
- (14) An Act concerning the commissioners’ courts of roads and revenue.—February 1, 1840.
- (15) An Act to provide for the appointment of a special coroner in certain cases.—February 5, 1840.
- (16) An Act relating to the testimony of witnesses in certain cases.—January 28, 1840.
- (17) An Act to authorize the taking of depositions in certain cases, and for other purposes.—January 30, 1840.
- (18) An Act to authorize commissioners to compel the attendance of witnesses.—February 5, 1840.
- (19) An Act to alter and amend the law respecting dowers.—December 21, 1840.
- (20) An Act to prescribe the mode of contesting certain elections therein named.—February 5, 1840.
- (21) An Act supplemental and amendatory to an act entitled “An Act to apportion the representatives among the several counties in this state, and to divide the state into senatorial districts, according to the late census,” approved February 2d, 1839.—February 1, 1840.
- (22) An Act to appoint administrators in certain cases.—February 5, 1840.
- (23) An Act in relation to clerk’s fees.—January 18, 1840.
- (24) An Act to provide for the appointment of guardians in certain cases.—February 1, 1840.
- (25) An Act to change the mode of reporting the decisions of the supreme court.—February 5, 1840.
- (26) An Act to increase the supreme court library.—February 5, 1840.
- (27) An Act to organize the courts of the tenth judicial circuit, and for other purposes.—February 5, 1840.

- | YEAR AND
NUMBER. | TITLE AND DATE. |
|---------------------|---|
| 1840: (28) | An Act to give the judges of the county courts in this state the power to grant <i>certioraris</i> , returnable to the circuit courts.—February 5, 1840. |
| (29) | An Act regulating the mode of collecting costs accruing in the supreme court.—December 23, 1840. |
| (30) | An Act for the better regulation of the state printing, and altering the mode of paying for the same.—February 4, 1840. |
| (31) | An Act to repeal an act therein named.—February 4, 1840. |
| (32) | An Act to reduce the fees of notaries public.—February 5, 1840. |
| (33) | An Act more effectually to prevent disorderly conduct at places of religious worship.—February 3, 1840. |
| (34) | An Act to repeal in part an act entitled "An Act to amend and consolidate the laws on the subject of public roads, so far as relates to causeways."—February 5, 1840. |
| (35) | An Act to change the mode of reporting the decisions of the supreme court.—February 5, 1840. |
| (36) | An Act to fix the rate of interest to be paid by the state bank and its several branches on the sixteenth section school fund deposited with them.—January 28, 1840. |
| (37) | An Act to regulate the collection of debts due by the purchasers of sixteenth sections.—January 16, 1840. |
| (38) | An Act in relation to sixteenth sections.—February 3, 1840. |
| (39) | An Act to raise a school fund to aid the valueless sixteenth sections in this state.—February 3, 1840. |
| (40) | An Act to prevent retailing spirituous liquors without a license.—February 1, 1840. |
| (41) | An Act to authorize the tax collectors and clerks of the county courts of the several counties in this state, to receive in payment of public dues certain claims therein named.—December 22, 1840. |
| (42) | An Act to compel county treasurers to make a full and explicit exhibit of the finances of their respective counties in each and every year.—December 15, 1840. |
| (43) | An Act to alter and amend the militia laws of this state.—February 3, 1840. |
| 1841: (1) | An Act to authorize attorneys at law residing in the territory of Florida, to practice law in the several courts of this state.—April 27, 1841. |
| (2) | An Act to better regulate the elections of president and directors of the state bank and its several branches.—December 27, 1841. |
| (3) | An Act to secure unknown, bad and doubtful debts owing to the bank of the state of Alabama and branches.—December 31, 1841. |
| (4) | An Act to amend the charters of the bank of the state of Alabama and the several branch banks in the mode of collecting their debts, and for other purposes.—December 4, 1841. |
| (5) | An Act the better to enable the collection of debts due the bank of Mobile.—December 29, 1841. |

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TITLE AND DATE.

- 1841: (6) An Act for the payment of the directors of the bank of the state of Alabama and its several branches for the year eighteen hundred and forty.—January 7, 1841.
- (7) An Act to amend the charters of the bank of the state of Alabama and its branches.—April 27, 1841.
- (8) An Act to amend the charters of the bank of Mobile, and the Planters' and Merchants' bank of Mobile.—April 26, 1841.
- (9) An Act for the better regulation of the management of steamboats.—December 31, 1841.
- (10) An Act to alter and amend the laws of this state relative to the collection of claims against steamboats and other water crafts, navigating the waters of Alabama.—December 14, 1841.
- (11) An Act regulating punishments under the penitentiary system.—January 9, 1841.
- (12) An Act to explain an act entitled "An Act to appoint administrators in certain cases."—January 2, 1841.
- (13) An Act to alter the manner of compensating executors and administrators in certain cases.—December 9, 1841.
- (14) An Act concerning suits against executors, administrators, &c.—December 2, 1841.
- (15) An Act to secure more speedily the collection of debts against incorporations.—December 31, 1841.
- (16) An Act to change the time of convening the general assembly.—December 9, 1841.
- (17) An Act to establish a warehouse for the inspection of tobacco in Decatur, in this state.—December 23, 1841.
- (18) An Act fixing the time of election, and the tenure of office of inspectors of tar, turpentine, bagging, rope, &c., in the city of Mobile.—January 9, 1841.
- (19) An Act to regulate the weighing of cotton in the city of Mobile, and for other purposes.—December 29, 1841.
- (20) An Act concerning county court judges.—January 9, 1841.
- (21) An Act to regulate judicial proceedings in the county court of Mobile county.—December 2, 1841.
- (22) An Act to regulate the proceedings of the several circuit courts of this state.—December 14, 1841.
- (23) An Act to divide the state of Alabama into three chancery divisions, and for other purposes.—December 30, 1841.
- (24) An Act to regulate the practice in the courts of chancery in this state.—January 2, 1841.
- (25) An Act further to provide for defraying the expenses of the chancery courts of this state.—December 31, 1841.
- (26) An Act providing for holding extra terms of the chancery court, and for other purposes.—December 31, 1841.
- (27) An Act to extend the jurisdiction of justices of the peace in certain cases.—December 31, 1841.
- (28) An Act to establish a board of physicians in the town of Jacksonville.—December 27, 1841.
- (29) An Act to establish an additional board of physicians in the town of Florence.—December 23, 1841.
- (30) An Act to incorporate and extend the powers of the Alabama medical society.—April 28, 1841.

YEAR AND NUMBER.	TITLE AND DATE.
1841: (31)	An Act to incorporate the medical society of the city of Mobile and for other purposes.—December 21, 1841.
(32)	An Act regulating the practice of dental surgery, and for other purposes.—December 31, 1841.
(33)	An Act to repeal in part "An Act in relation to sixteenth sections," approved third of February, eighteen hundred and forty.—April 26, 1841.
(34)	An Act to provide for the election of sheriffs in certain cases.—January 2, 1841.
(35)	An Act more effectually to enforce the performance of the duties of sheriffs in certain cases.—January 9, 1841.
(36)	An Act to accept the two per cent. fund.—December 29, 1841.
(37)	An Act supplementary to "An Act to divide the state of Alabama into three chancery divisions, and for other purposes," approved December 30, 1841.—December 31, 1841.
(38)	An Act to amend an act, entitled "An Act, the more effectually to prohibit free negroes and persons of color, from entering into and remaining in this state," approved 2d February, 1839.—December 4, 1841.
1842: (1)	An Act to prevent frauds in elections.—January 1, 1842.
(2)	An Act to prevent the sacrifice of real estate.—January 1, 1842.
(3)	An Act to amend the law in relation to witnesses in state cases.—January 1, 1842.
(4)	An Act regulating the salaries of certain officers, therein named.—December 29, 1842.
1843: (1)	An Act to regulate the state bank of Alabama and for other purposes.—February 14, 1843.
(2)	An Act to regulate the management and expenses of the bank of the state of Alabama, and its several branches. February 11, 1843.
(3)	An Act in relation to compensation of bank attorneys.—February 14, 1843.
(4)	An Act changing the direction of the tax fees on suits at the instance of the banks of this state.—February 14, 1843.
(5)	An Act to regulate suits against the bank of the state of Alabama, or any of the branches thereof.—February 13, 1843.
(6)	An Act for the regulation of the branch of the bank of the state of Alabama at Mobile.—January 21, 1843.
(7)	An Act for the regulation of the branch of the bank of the state of Alabama at Montgomery.—January 25, 1843.
(8)	An Act to put in liquidation the branch of the bank of the state of Alabama at Huntsville.—February 4, 1843.
(9)	An Act to regulate the branch of the bank of the state of Alabama at Decatur.—January 21, 1843.
(10)	An Act to amend an act for the better regulation and management of steam boats.—January 27, 1843.
(11)	An Act concerning coroners.—February 4, 1843.
(12)	An Act to impose additional duties on the secretary of

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- state and clerks of the county courts, and for other purposes—January 27, 1843.
- 1843: (13) An Act to regulate the expenditures of the county of Mobile, and for other purposes.—February 11, 1843.
- (14) An Act amendatory of the laws on the subject of divorces. February 13, 1843.
- (15) An Act regulating and prescribing the mode of settlement in orphans' courts by executors, administrators and guardians.—February 14, 1843.
- (16) An Act amendatory of the laws in relation to the estates of deceased persons.—February 13, 1843.
- (17) An Act in relation to the settlement of the accounts of executors, administrators and guardians.—February 13, 1843.
- (18) An Act to exempt certain property therein named from execution in the several counties of this state.—February 14, 1843.
- (19) An Act to exempt real estate, not exceeding forty acres, from execution upon contracts hereafter made.—February 15, 1843.
- (20) An Act to divide the state of Alabama into seven congressional districts, according to the white population.—February 13, 1843.
- (21) An Act to reduce the fees of the clerks of the several courts of this state, sheriffs and other officers.—February 13, 1843.
- (22) An Act to repeal an act requiring the governor of the state to reside at the seat of government during the interval of the legislature.—February 14, 1843.
- (23) An Act to amend an act entitled "An Act to authorize guardians of minors, idiots and lunatics, to receive and remove from the state any property to which such ward may be entitled, when both guardian and ward reside out of the state, or to remove the same from one county to another in this state," &c. approved February 2d, 1839.—February 13, 1843.
- (24) An Act to amend the charters of the several incorporated cities and towns in this state.—February 13, 1843.
- (25) An Act to amend the laws now in force in relation to insolvent estates.—February 9, 1843.
- (26) An Act to establish a tobacco inspection in the city of Wetumpka.—January 27, 1843.
- (27) An Act to repeal a part of an act therein named, and for other purposes.—February 14, 1843.
- (28) An Act to divide the state of Alabama into nine judicial districts, and to fix the times of holding the terms of the several circuit courts in this state.—February 9, 1843.
- (29) An Act to authorize the amendments of writs of error.—January 12, 1843.
- (30) An Act to amend the laws in regard to limitations of actions.—February 7, 1843.
- (31) An Act to alter the laws now in force relating to the change of venue.—February 14, 1843.
- (32) An Act concerning chancery practice.—February 13, 1843.

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- 1843: (33) An Act to change the time of holding certain chancery courts, in the southern chancery division.—February 13, 1843.
- (34) An Act to regulate and define the duties and liabilities of constables, and for other purposes.—February 15, 1843.
- (35) An Act to receive, print, bind, and distribute the new digest, compiled by C. C. Clay, Esq. and for other purposes.—January 11, 1843.
- (36) An Act amendatory of an act entitled “An Act for the better regulation of the state printing, and altering the mode of paying for the same.”—February 14, 1843.
- (37) An Act to provide for the distribution of certain documents among the several counties in this state.—February 15, 1843.
- (38) An Act to prohibit the raising of money by lottery.—January 12, 1843.
- (39) An Act to amend an act entitled “An Act regulating punishments under the penitentiary system.”—February 11, 1843.
- (40) An Act to authorize the signing and sealing of bills of exceptions in criminal cases.—February 14, 1843.
- (41) An Act to regulate the selection of grand and petit jurors.—February 13, 1843.
- (42) An Act to reduce the pay of the inspectors of the penitentiary, and define their duties, and for other purposes.—February 11, 1843.
- (43) An Act regulating the proof required to sustain an action at law in certain cases.—February 7, 1843.
- (44) An Act to amend the law in relation to small pox, and other contagious disorders.—January 21, 1843.
- (45) An Act the better to secure rents.—February 11, 1843.
- (46) An Act to secure the performance of the duties of public ferrymen.—February 2, 1843.
- (47) An Act authorizing proceedings at the instance of the state of Alabama, against the owners of turnpike roads, in certain cases.—February 6, 1843.
- (48) An Act to fix, regulate and reduce the fees and salaries of certain officers therein named.—February 13, 1843.
- (49) Joint Resolutions in relation to the salt wells and salt springs belonging to the state of Alabama.—February 13, 1843.
- (50) An Act regulating the issuing of patents for sixteenth section lands.—February 7, 1843.
- (51) An Act to compel commissioners of sixteenth sections to pay over funds received by them, and for other purposes.—February 13, 1843.
- (52) An Act for the relief of the purchasers of sixteenth sections.—February 13, 1843.
- (53) An Act concerning the estates of deceased persons.—January 23, 1843.
- (54) An Act regulating the place of holding the special terms of the circuit courts of Mobile county, and for other purposes.—February 2, 1843.
- (55) An Act concerning trustees.—February 13, 1843.
- (56) An Act to raise a revenue for the support of the state gov-

YEAR AND NUMBER.	TITLE AND DATE.
	ernment and for other purposes.—February 13, 1843.
1843: (57)	Joint Resolutions of the senate and house of representatives of the state of Alabama, in general assembly convened.—February 10, 1843.
(58)	An Act for the better organization of the board of trustees of the university of Alabama.—February 13, 1843.
(59)	Joint Resolutions requiring the secretary of state to furnish stationery for the supreme court judges.—January 23, 1843.
(60)	Joint Resolutions of the senate and house of representatives of the state of Alabama, in general assembly convened, to authorize the bank of the state of Alabama and its several branches to issue small bank notes, in exchange for larger bank notes.—February 13, 1843.
(61)	An Act to extend the jurisdiction of county courts in certain cases.—February 13, 1843.
(62)	An Act to authorize the loan of a portion of the two per cent. fund to the Montgomery and West Point rail road company.—February 14, 1843.

DIGEST

OF

THE LAWS OF ALABAMA.

ALABAMA.

§ 1. ALL that tract of country, bounded on the west by the Mississippi, on the north by a line to be drawn due east from the mouth of the Yazoo to the Chattahoochee river, on the east by the river Chattahoochee, and on the south by the thirty-first degree of north latitude, shall be, and hereby is constituted one district, to be called the Mississippi territory.

Act of Congress, 1798,
Sec. 3.
Mississippi Territory established.

§ 2. The tract of country, lying north of the Mississippi territory, and south of the state of Tennessee, and bounded on the east by the state of Georgia, and on the west by the state of Louisiana, shall be, and the same is hereby annexed to, and made a part of the Mississippi territory.

Act of Congress, 1804,
Sec. 7.
Boundaries enlarged.

§ 3. All that portion of territory, lying east of Pearl river, west of the Perdido, and south of the thirty-first degree of latitude, shall be, and the same is hereby annexed to the Mississippi territory.

Act of Congress, 1812,
Sec. 1.
Boundaries further enlarged.

§ 4. All that part of the *Mississippi territory*, which lies within the following boundaries, to wit: beginning at the point where the line of the thirty-first degree of north latitude intersects the Perdido river, thence east to the western boundary line of the state of Georgia, thence along said line to the southern boundary line of the state of Tennessee, thence west along said boundary line to the Tennessee river, thence up the same to the mouth of Bear creek, thence by a direct line to the north-west corner of Washington county, thence due south to the Gulf of Mexico, thence eastwardly, including all the islands within six leagues of the shore, to the Perdido river, and thence up the same to the beginning, shall, for the purpose of a temporary government, constitute a separate territory, and be called "Alabama."

Act of Congress, 1817,
Sec. 1.
Alabama Territory formed, and its boundaries defined.

§ 5. The inhabitants of the territory of Alabama are hereby authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper; and the said territory, when formed into a state, shall be admitted into the Union,

Act of Congress, 1819,
Sec. 1.
The inhabitants of Alabama authorized to form

a Constitution and state government. upon the same footing with the original states, in all respects whatever.

§ 6. The said state shall consist of all the territory included within the following boundaries, to wit: beginning at the point where the thirty-first degree of north latitude intersects the Perdido river; thence, east to the western boundary line of the state of Georgia; thence, along said line to the southern boundary line of the state of Tennessee; thence, west, along said boundary line to the Tennessee river; thence, up the same to the mouth of Bear creek: thence, by a direct line to the north-west corner of Washington county; thence, due south to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore to the Perdido river; and thence, up the same, to the beginning.

Including islands within six leagues of the shore.

Ib. Sec. 3.

Line of demarcation between Mississippi and the state to be formed, to be run and cut by the surveyors of lands south of Tennessee and the surveyor of Alabama Territory.

In what manner, provided, &c., Con. Ala. Preamble.

§ 7. It shall be the duty of the surveyor of the lands of the United States south of the state of Tennessee, and the surveyor of the public lands in the Alabama territory, to run and cut out the line of demarcation, between the state of Mississippi and the state to be formed of the Alabama territory; and if it should appear to said surveyors, that so much of said line designated in the preceding section, running due south from the north-west corner of Washington county to the Gulf of Mexico, will encroach on the counties of Wayne, Green, or Jackson, in said state of Mississippi, then the same shall be so altered as to run in a direct line from the north-west corner of Washington county to a point on the Gulf of Mexico, ten miles east of the mouth of the river Pascagoula.

§ 8. We, the people of the Alabama territory, having the right of admission into the general government as a member of the Union, consistent with the constitution and laws of the United States, by our representatives, assembled in convention at the town of Huntsville, on Monday, the fifth day of July, one thousand eight hundred and nineteen, in pursuance of an act of congress, entitled "An Act to enable the people of the Alabama territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states;" in order to establish justice, ensure tranquility, provide for the common defence, promote the general welfare, and secure to ourselves and our posterity the rights of life, liberty, and property, do ordain and establish the following constitution, or form of government; and do mutually agree with each other to form ourselves into a free and independent state, by the name of "*The State of Alabama.*" And we do hereby recognize, confirm, and establish the boundaries assigned to said state by the act of congress aforesaid:—subject to such alteration as is provided in the third section of said act of congress, and subject to such enlargement as may be made by law in consequence of any cession of territory by the United States, or either of them.

State formed and name adopted. Boundaries assigned by Congress recognized and confirmed.

1840—(1)

Sec. 1.

Boundary between Alabama and Georgia.

§ 9. The state of Alabama does hereby accept, as the true dividing line between this state and that of Georgia, the line which was run and marked out by the commissioners of Georgia in eighteen hundred and twenty-six, beginning at what is called Miller's Bend on the Chattahoochee river, thence along said marked line to Nickajack.

NOTE.—The titles of the acts referred to in the margin, may be found in page xlv., except the last, which may be found in the List of the Statute Laws.

AMENDMENTS TO THE CONSTITUTION.

THE general assembly, whenever two thirds of each house shall deem it necessary, may propose amendments to this constitution, which proposed amendments shall be duly published in print, at least three months before the next general election of representatives, for the consideration of the people, and it shall be the duty of the several returning officers, at the next general election which shall be held for representatives, to open a poll for, and make a return to, the secretary of state for the time being, of the names of all those voting for representatives, who have voted on such proposed amendments: and if, thereupon, it shall appear, that a majority of all the citizens of this state, voting for representatives, have voted in favor of such proposed amendments, and two thirds of each house of the next general assembly shall, after such an election, and before another, ratify the same amendments by yeas and nays, they shall be valid, to all intents and purposes, as parts of this constitution: *Provided*, that the said proposed amendments shall, at each of the said sessions, have been read three times, on three several days, in each house.

Con. Ala.
Art 6.
Constitu-
tion, how
amended.

§ 1. Whenever any amendment of the constitution of this state may be proposed by the legislature to the people thereof, it shall be the duty of each officer, holding the next general election, to inquire of every voter, whether he votes for or against the proposed amendment or amendments; and the managers holding said elections shall cause the respective clerks to enter the name of every person voting, with the word "Yea," or "Nay," as he may vote, opposite his name; a list of which said names he shall certify and return to the sheriff or other returning officer in his county, who shall send up a true and correct list of the names of all persons so voting, certified under his hand to the secretary of state, within thirty days after the result of the election in each county or district shall have been ascertained.

1829—(5) and
1830—(7)
Consolidated
Duty of officers holding election, in taking and certifying the votes on the proposed amendment to the constitution.
A Sheriff or returning officer to make return to secretary of state.

§ 2. If any sheriff or officer, holding, or returning, or managing, any election in this state, shall fail to perform the duties required of him by this act, such sheriff or other officer shall forfeit and pay the sum of five hundred dollars, to be recovered by action of debt, in any court having jurisdiction thereof, one half to the use of the state, and the other half to any person who may sue for the same; and shall also forfeit his office, and shall be incapable of holding the same again for the term of six years.

Penalty for failure.

§ 3. It shall be the duty of the secretary of state to cause this act, together with the resolutions proposing amendments to the constitution, to be published in print throughout the state, three months preceding the next general election; and he shall give notice of the failure of every returning officer, who fails to make the return as herein before prescribed.

Secretary of state's duties.

§ 4. It shall be the duty of the several returning officers, mentioned in this act, to return the number of all those, who may vote for representatives and not for the proposed amendments, to the secretary of state, at the same time and in the same manner that they return the votes for and against the proposed amendment to the constitution.

Returning officer to return the number of those voting for representatives, and not for the amendment.

ARBITRATION.

1810—(4)
Mode of proceeding in order to terminate suits and controversies by arbitration.

a. Act of Dec. 11, 1820.
Sec. 2.

Arbitrators may issue subpoenas for witnesses

Witnesses' compensation, privilege, and liabilities.

Arbitrators to be sworn.

To make award in writing.

Award to be entered of record.

For what causes it may be appealed from.

Award not affected by informality, if it decides the case.

§ 1. It shall be lawful for all persons desirous to end any controversy or suit by arbitration, to appoint any person or persons as arbitrators, and (if no suit is pending) the parties shall concisely state in writing the nature of the controversy to any court having jurisdiction thereof: whereupon the court shall issue an order, certified by the clerk of the court, and directed to said arbitrators, stating the dispute to them referred:—or, if in vacation, such statement may be made to the clerk of the court, who shall issue the order heretofore required to be issued by the judges.^a And in case any arbitrator or arbitrators so appointed shall fail or refuse to act, the parties shall have power to appoint one or more arbitrators (as the case may be) in writing, which shall be signed by such parties, deposited in the hands of the arbitrators, and by them returned to the proper officer with the other papers—said arbitrators or either of them are empowered to issue subpoenas for witnesses, under the same regulations as are prescribed by law in cases of suits, to which all sheriffs and constables are directed to give obedience; and all persons summoned as witnesses by virtue of said subpoenas, shall be allowed the same compensation while travelling to, and attending on, said arbitration, and be equally privileged from arrest, or on failure to attend at the times and places in said subpoenas expressed, shall be subject to the same fines and penalties as witnesses are, in similar cases, in the circuit courts.

§ 2. The arbitrators so chosen, before they enter on the investigation of any matters to them submitted, shall take an oath or affirmation, impartially to determine the controversy to them submitted, agreeably to evidence and the equity of the case, to the best of their judgment, without favor or affection; which oath shall be administered to them by any judge or justice of the peace within this state. The said arbitrators shall make up their award in writing, under their hands and seals, noting therein the time at which it was made; one fair copy of which, signed as aforesaid, shall, immediately upon its being made, be delivered to each of the contending parties; and the original shall be delivered to the court in which the commission was made, at the court next succeeding the date of said award. The award so made, shall be entered of record, and made the judgment or decree of said court, and shall not be invalidated, set aside, or appealed from, unless it shall be made to appear to said court, that such award was obtained by corruption, evident partiality, or other undue means, in which case, either party may appeal therefrom to any court having cognizance thereof, under the rules and regulations prescribed by law for granting appeals from said courts.

§ 3. No award, made by virtue of this act shall be liable to be examined into, superseded or reversed by writ of error, or set aside by the court to which it was returned, for want of form only, nor for other irregularity, if such award decides the case, suit, matter, or controversy, submitted to arbitration. (1)

(1) An award shall not be set aside, because the arbitrators state, as the ground of it, matter which is not a legal cause of action: *Goodwin v. Yarbrough*, 1 *Stewt. Rep.* 152. The court will intend every thing which the record will warrant, to sustain a judgment rendered on an award: *Tankersley v. Richardson*, 2 *Stewt. Rep.* 130. A award held sufficient to support the judgment although no declaration was filed: *Ib.*

§ 4. In cases of suit or controversy, where the amount shall not exceed fifty dollars, the parties may obtain an order from a justice of the peace, directed to such arbitrators as may be appointed, stating the dispute to them referred, who shall take the oath, proceed in the same manner, and exercise the same powers hereinbefore provided; and judgment shall be entered upon the award of the said arbitrators, when rendered to the justice by whom the order was made, which shall not be set aside, invalidated, or appealed from, except in the manner and for the causes prescribed in this act.

When amount does not exceed 50 dollars.

§ 5. The arbitrators for their services shall receive two dollars per day, if demanded, to be paid jointly by the contending parties, before the delivery of the copies of the award: and the justices and clerks shall be allowed, for all the services performed by them under this act, the same fees as are allowed by law for the like services in cases of a similar nature.

Compensation of arbitrators.

§ 6. The fees to the justices and clerks, prior to the return and entry of the award, shall be jointly paid down by the contending parties, as those services are rendered; but after the award is entered of record, all subsequent costs shall be charged to, and collectable from, that party against whom the judgment or award shall be, under such award, except the award shall otherwise direct.

Fees of clerks, how paid.

§ 7. When any person who may have a dispute of what nature soever, shall agree to have the same determined by referees, mutually chosen by the parties for the purpose, it shall be lawful for the person or persons making the demand in the action, to make out a particular statement thereof, under his or their hands, in writing, and to lodge the same with some justice of the peace, of the county in which either of the parties may reside; and the said justice, on application of the parties, shall make out an agreement to be annexed to the aforesaid demand, and to be by them or their lawful agents or attorneys, subscribed in substance as follows:

1824—(13)

Sec. 1.

Party making a demand may lodge a statement thereof with justice of the peace.

State of Alabama,

County.

Agreement of parties to submit.

Know all men, that A. B. of and C. D. of have agreed to submit the demand made by the said A. B. against the said C. D. which is hereunto annexed, (and all other demands as the case may be,) to the determination of E. F., G. H., and I. K.; the report of whom, or the major part of whom, being made as soon as may be, to any court of record of said county, (if the amount exceed fifty dollars; if not to any justice of the peace of said county,) judgment thereon to be final: and if either of the parties shall neglect to appear before the referees, after the proper notice has been given of the time and place appointed by the referees for hearing the parties in this action, which notice the referees shall be the judges of, they shall then have the power to proceed *ex parte*.

Stipulation for *ex parte* hearing.

A. B.

C. D.

This day the above named A. B. and C. D. appeared personally before me, and acknowledged the above instrument to be their free act: Given under my hand, this day of 18

Justices' certificate.

A. B. Justice of the Peace.

§ 8. In all cases where the amount of the judgment rendered shall exceed fifty dollars, the same shall be returned by the referees, under their hands and seals, to either the county or circuit court, of the county in which such justice of the peace may dwell at the time of taking the agreement as aforesaid: and the court, to whom the report of the referees may be made as aforesaid, shall have cognizance

1b. Sec. 2. Judgment exceeding 50 dollars to be returned to circuit or county court. Proceedings thereon.

thereof, in the same manner, and under the same rules, as if the referees had been appointed by a rule of said court.

Ib. Sec. 3. Judgment not exceeding 50 dollars to be returned to some justice, who shall issue execution.

§ 9. In all cases, where the amount of the judgment rendered as aforesaid, shall be fifty dollars or under, the same shall be returned to some justice of the peace of the county wherein such order may have been made, who, thereupon, shall enter up judgment, and award execution, in the same manner as if such judgment had been rendered by such justice of the peace, without the intervention of such referees.

Ib. Sec. 4. By consent of parties award may be published before returned. Parties then agreeing, award not to be returned, but to be a bar.

§ 10. When the parties shall agree that the determination of the referees may be made known prior to its being returned as aforesaid, it shall be lawful for the referees to make the determination known to the parties, without its affecting in any degree the validity thereof; and if the parties shall then agree to settle their dispute according to the determination of the referees or otherwise, without further process, the said referees may deliver to the parties the papers belonging to them respectively; otherwise, they shall make a report of their proceedings as before provided for by this act: *Provided*, that such determination shall be a bar to a second suit or plaint for the same cause of action.

Ib. Sec. 5. Referees vested with the same authority as those appointed by rule of court.

§ 11. The referees who may be appointed in pursuance of this act, shall be vested with all the authority that referees are vested with, who are appointed by a rule of court; and witnesses may be by them, or either of them, summoned to appear before them, and be sworn in the same manner, as is or may be prescribed by law for summoning witnesses before referees appointed by a rule of court as aforesaid.

Ib. Sec. 6. Award final, unless obtained by undue means.

§ 12. No judgment awarded by referees as aforesaid, shall be subject to be reversed or set aside for informality or other cause, if the subject matter of the reference is decided; unless it should appear satisfactorily to the court, or justice of the peace, before whom the same may be returned, that such judgment was obtained by evident partiality, bribery, corruption, or other undue means.

Ib. Sec. 8. Referees' compensation, 1 dollar per day.

§ 13. The referees shall be entitled to demand and receive the sum of one dollar each, for every day they may be engaged in the determination of any controversy to them thus submitted.

Ib. Sec. 9. Referees' oath.

§ 14. The referees shall, before they enter on the discharge of their duty, take an oath or affirmation, impartially to determine the matter to them referred, according to justice and the opinion they entertain of the evidence, without favor, fear, or affection.

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ARMS—PUBLIC.

1820—(6.) Governor may order arms to be transported to any point.

§ 1. The governor of the state of Alabama, or the person exercising the powers of governor, is hereby authorized to order the quartermaster-general, to cause to be transported to any point in this state, any number of public arms which he may deem necessary, when he shall have reason to believe that there is danger of insurrection or invasion, or that the public good requires such transportation.

*Ib. Sec. 3.* Quartermaster-General to execute Governor's order.

§ 2. The quartermaster-general is hereby required to cause to be conveyed, upon receiving the governor's order, forthwith, the number of arms to the place specified in such order.

1820—(17) Sec. 1. a The preceding act Governor may design

§ 3. Whenever it is deemed necessary by the governor to transmit the public arms, in pursuance of the act to which this is an amendment,<sup>a</sup> he is hereby authorized to send them to such officer as he may appoint; which officer so receiving such arms, shall give



bond with sufficient security to the governor and his successors in office, in such sum as the governor may deem sufficient, for the safe keeping and delivery of said arms, when required by the governor.

§ 4. The public arms and accoutrements belonging to this state, shall be distributed among the volunteer corps of the same, in the manner, and on the conditions hereinafter prescribed.

§ 5. It shall be the duty of the commander-in-chief, on the application of a commander of a brigade, to issue his order to the quartermaster-general, or person having charge of the public arsenal, to hand over the arms aforesaid, in the following proportion to the different brigades, to wit: to the first brigade seventy-two muskets and accoutrements; to the second brigade, seventy-two muskets and accoutrements; to the third brigade, forty-eight muskets and accoutrements; to the fourth brigade, one hundred and twenty muskets and accoutrements; to the fifth brigade, one hundred and sixty muskets and accoutrements; to the sixth brigade, ninety-six muskets and accoutrements; to the seventh brigade, one hundred and sixty muskets and accoutrements; to the eighth brigade, one hundred and twenty muskets and accoutrements; to the ninth brigade, ninety-six muskets and accoutrements; to the tenth brigade, forty-eight muskets and accoutrements; to the eleventh brigade, ninety-six muskets and accoutrements; to the twelfth brigade, seventy-two muskets and accoutrements; to the thirteenth brigade, seventy-two muskets and accoutrements: *Provided*, said application shall be accompanied with the bond of the colonel commanding the regiment to which the volunteer corps, for whose use the arms are drawn, shall be attached, or some other officer of said regiment, with good and sufficient security, in double the value thereof, conditioned for the safe keeping and return of said arms, when called for by the proper authority.

§ 6. Said bond shall be made payable to the governor for the time being, and his successors in office, and be approved of by him.

§ 7. The pistols and sabres now in the arsenal shall be distributed on the conditions prescribed in the second section of this act, and in the following manner, to wit: To the first brigade, thirty-nine sabres; to the third brigade, eighty pistols; to the fourth brigade, eighty pistols; to the fifth brigade, forty-five sabres; to the tenth brigade, forty-five sabres; to the twelfth brigade, eighty pistols.

§ 8. Should the officers of either brigade, neglect to make application for said arms within twelve months from the passage of this act, on the conditions pointed out in the second section of this act, it shall be the duty of the commander-in-chief, on application from either of the other brigades, to order the same to be furnished to said applicant on his complying with the provisions of the aforesaid second section.

§ 9. The governor is hereby authorized and required, whenever it shall by him be deemed expedient, to call in such portion of the public arms as may have been, or may hereafter be delivered, or cause a renewal of the bond or bonds which may have been taken, with good and sufficient security.

§ 10. A discretionary power is hereby vested in the governor, to distribute the public arms that are now, or hereafter may be received, for the use of this state, among the volunteer companies, if applied for, in such manner as he may think proper, having a due regard to the different sections of the state.

§ 11. Whenever any of the public arms may be distributed, it shall be the duty of the governor to take bonds in the manner directed

nate officer to receive the arms, who shall give bond. 1827—(4)

Sec. 1. Arms, &c. to be distributed to volunteer corps.

Ib. Sec. 2. Duty of the commander-in-chief.

Apportionment of arms &c. among the several brigades.

Colonel or other officer of the regiment to give bond.

Ib. Sec. 3. Bond payable to the governor, and to be approved by him.

Ib. Sec. 4. Pistols and sabres, how distributed.

Ib. Sec. 5. Quotas signed, if not applied for in 12 months, may be distributed to other brigades.

1828—(32)

Sec. 1. Governor may call in arms, or cause bonds to be renewed.

Ib. Sec. 2. May distribute arms to volunteer companies.

Ib. Sec. 3. Governor to take bonds.



by the proviso to the second section of the act, to provide for the distribution of the public arms, among the different volunteer corps in this state, passed fourth January, 1827. [See § 5.]

1823—(23)

Sec. 4.

Assistant adjutant-generals of brigades to inspect arms.

§ 12. The governor shall cause the assistant adjutant-general of each brigade to examine and inspect all the public arms, which may be distributed or delivered to volunteer companies in his brigade, and for which bonds may be given, at least once in every year, and report their number, and the order in which said arms are kept, and also the probable solvency of the makers of the bonds;—and on failure of any assistant adjutant-general to perform the said service, when and as required by the governor, he shall be liable to a fine of fifty dollars, to be recovered as other fines and forfeitures under the militia laws.

## ATTACHMENT.

1833—(22)

On return of *non est inventus*, plaintiff may sue out *alias* or *pluries capias* or an attachment.

Defendant not appearing, plaintiff may have final judgment, or interlocutory judgment with writ of inquiry.

Property attached to the judgment, and execution for the residue.

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§ 1. When a writ shall issue from any of the courts of this state, commanding the sheriff or other officer, to take the body of any person, to answer any civil action in said court, and the sheriff shall return that the defendant is not to be found within his county, the plaintiff may, at his election, sue out an attachment against the personal estate of such defendant, or an *alias* or a *pluries capias*, returnable in the same manner as original process. And if on the issuance of an attachment, the sheriff shall return any goods by him attached, and the defendant shall fail to appear, and plead within the time limited by the laws regulating pleadings, the plaintiff shall be entitled, if in an action of debt, to final judgment, and if an action sounding in damages, to an interlocutory judgment, and may execute a writ of inquiry at the succeeding term. And the goods so attached, if not replevied or sold, according to the rules hereinafter prescribed for goods taken on original attachments, shall remain in the custody of the sheriff until final judgment, and then be disposed of in the same manner as goods taken on a writ of *fieri facias*; and if the judgment shall not be satisfied by the goods attached, the plaintiff shall have execution for the residue.

Who may issue attachments.

Affidavit required before issuing an attachment.

Affidavit required before issuing an attachment.

Affidavit required before issuing an attachment.

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Affidavit required before issuing an attachment.

§ 2. Original attachments, foreign and domestic, may be issued by any judge of the circuit or county courts, or any justice of the peace.

§ 3. Every judge or justice, before issuing an attachment, shall require the party applying for the same, his agent, attorney or factor, to make affidavit in writing, that the person, against whom the attachment is prayed, absconds, or secretes him or herself; that he or she resides out of this state; that he or she is about to remove out of this state, so that the ordinary process of law cannot be served upon him or her; or that he or she is about to remove his or her property out of the state, and that thereby the plaintiff will probably lose the debt, or have to sue for it in another state; and shall further require the person applying for an attachment, his or her agent, attorney or factor, to swear to the amount of the sum due the plaintiff, and that an attachment is not sued out for the purpose of vexing or harassing the defendant; and shall further require the plaintiff, his agent, attorney or factor, to give bond payable to the defendant in double the amount sworn to be due, conditioned that the plaintiff shall prosecute his or her attachment to effect, and pay the defendant all such dam-

Plaintiff's bond.



ages as he or she may sustain by the wrongful or vexatious suing out of such attachment: which bond, together with the affidavit of the party complaining, his agent, attorney or factor, subscribed with the proper name of the person making the same, shall be returned by the judge or justice taking the same, to the court or justice to which the attachment is returnable: and upon such bond and affidavit being made as hereinbefore provided, it shall be the duty of said judge or justice, to grant an attachment against the estate of such debtor, wherever the same may be found, in the hands of any person or persons, indebted to or having any of the effects of the defendant, or so much thereof as shall be of value sufficient to satisfy the debt or demand, and costs of the complainant; which attachment shall be deemed the leading process in such action, and the same proceedings shall be had thereon, as in judicial attachments. Every attachment issued without bond and affidavit, taken and returned as aforesaid, shall be abated on the plea of the defendant.

§ 4. Whenever the sum sworn to be due shall exceed fifty dollars, it shall be the duty of the person issuing the same, to make it returnable to the circuit or county court, as the party applying therefor may require.

§ 5. Justices of the peace shall have the exclusive right of issuing attachments, where the sum sworn to be due, shall not exceed fifty dollars; and all such attachments shall be returnable before some justice of the peace, according to the laws regulating the return of process, issued by justices of the peace.

§ 6. And to prevent errors in issuing attachments, and taking bonds thereupon, the attachment shall be in the following form, to wit:

*The State of Alabama.* To any sheriff of the state of Alabama, greeting: Whereas, A. B. (or A. B. attorney, agent or factor, as the case may be, of C. D.,) hath complained on oath to one of the judges of the circuit court of the state of Alabama, (or judge of the county court of \_\_\_\_\_ county or a justice of the peace in and for the county of \_\_\_\_\_ as the case may be,) that E. F. is justly indebted to him (or the said C. D.) to the amount of \_\_\_\_\_, and oath having been also made, that the said E. F. absconds or secretes himself; (or resides out of this state: or is about to remove himself out of this state, so that the ordinary process of law cannot be served upon him; or is about to remove his property out of this state, and that thereby the said A. B. or C. D. will probably lose the debt, or have to sue for it in another state,) and the said \_\_\_\_\_ having given bond and security according to the directions of the act in such case made and provided, and made oath that an attachment is not sued out for the purpose of vexing or harassing the said E. F.: We, therefore, command you that you attach so much of the estate of the said E. F., if to be found in your county, (replevable on security,) as shall be of value sufficient to satisfy the said debt and costs, according to the complaint: and such estate, so attached, in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon, to be had at the \_\_\_\_\_ court to be held for \_\_\_\_\_ county, at \_\_\_\_\_ upon the \_\_\_\_\_ day of \_\_\_\_\_ next; (or before me, or before \_\_\_\_\_ esquire, a justice of the peace in and for said county, on the \_\_\_\_\_ day of \_\_\_\_\_ next;) so as to compel the said E. F. to appear and answer the above complaint of the said \_\_\_\_\_: when and where you shall make known to the said court (or justice) how you have executed this writ. Witness \_\_\_\_\_ judge of said court, (or a justice of the peace in and

Bond and affidavit to be returned with attachment. Duty of judges and justices to issue attachments.

Attachment the leading process. Attachment without bond or affidavit, to abate.

Over 50 dollars to be returnable to circuit or county court.

Not exceeding 50 dollars, returnable before justice of the peace.

Form of attachment.



for the county aforesaid,) at the day of in the year of our Lord, and of American Independence, the . Which attachment shall be signed and sealed by the judge or justice granting the same. And the bond to be given on obtaining such attachment, shall be in the following form, to wit:

Form of the bond. Know all men, that we and , all of the county of , (as the case may be) are held and firmly bound unto in the sum of , to be paid to said , his certain attorney, executors, administrators, or assigns. For which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated the day of in the year of our Lord, .

And condition. The condition of this obligation is such, that whereas, the above bounden hath the day of the date hereof, prayed an attachment, at the suit of against the estate of the above named, for the sum of ; and hath obtained the same returnable to the court of , to be holden at , on the day of next (or before , a justice of the peace in and for the county of , at the office of the said justice on the day of .) Now, if the said shall prosecute his attachment with effect, and pay the defendant all such damages as he may sustain by the wrongful or vexatious suing out of such attachment, then the above obligation shall be void ; otherwise to remain in full force and effect : *Provided, nevertheless*, that no attachment shall be abated for want of form, if the essential matters expressed in the foregoing precedent be set forth in such attachment.

Not to abate for want of form. § 7. A writ of attachment may in all cases issue against the property of a debtor, legally subject to the process of attachment, although the debt or demand of the plaintiff be not due ; which attachment shall be a lien on the property attached, until such debt or demand becomes due, when judgment shall be rendered and execution issued.

Property liable to waste, may be sold. But if the property so attached, be clearly of a wasting or perishable nature, then the same shall be sold, giving a credit on the sum until the debt or demand of the plaintiff becomes due, on the purchaser giving bond with security for the payment of the purchase-money, which bond shall be lodged with the other papers in the cause ; and if the money is not paid at the expiration of the time given, the clerk or justice shall issue execution thereon against the principal and security, or either of them ; and the money when collected, shall be paid into the hands of the clerk or justice, to abide the final decision of the cause.

Purchaser's bond. Execution on the bond, if not paid.

Perishable property may be sold if not replevied in 20 days. § 8. When any estate attached shall, on the oath of the plaintiff, his or her attorney, or agent, or other credible person, be certified to any judge or justice of the peace, to be likely to waste or be destroyed by keeping ; and if the person to whom it belongs, his or her attorney, agent, or factor, shall not within twenty days after the levy of the attachment, replevy the same, then such estate shall, by the order of said judge or justice, be sold at public vendue by such officer ; he having first advertised such sale at the court-house and two other public places in his county, at least fifteen days previously. And the officer shall, within five days after such sale, return the order of sale to the court or justice to which the attachment is returnable, with his proceedings thereon, and also at the time of making such return, shall pay over into the hands of the clerk or justice, all money arising from such sale, which money shall be subject to the judgment on the attachment. Any officer failing to return such

15 days' notice of sale. Order of sale to be returned, and proceeds paid over within 5 days after sale.



order of sale as above directed, shall be liable to the like process of either the plaintiff or defendant, as officers are for failing to return writs of *venditioni exponas*; and any officer, who, after the expiration of the time allowed for paying the proceeds of the sale, shall neglect or refuse to pay the same on the demand of the clerk or justice, shall be subject to the like proceedings at the instance of the clerk or justice, as officers are for failing to pay over money levied upon a *feri facias*.

§ 9. When any person being a non-resident of this state, is indebted to any person, also a non-resident, either by judgment, note or otherwise, and removes his or her property into, or holds property in this state, which would be subject to attachment for the benefit of a resident of this state, the same benefit shall be extended to such non-resident, as is by law secured to persons residing within this state: *Provided*, That such non-resident shall give good and sufficient security, residing in this state, to be approved by the judge of the county court where the property or effects may be, or any judge or clerk of the circuit court, for the amount and with the like condition as required in other cases; and that in addition to the oath now required by law, such non-resident plaintiff, his agent or attorney, before obtaining any such attachment as is authorized by this act, shall swear that the defendant against whom such attachment is sued out, has not sufficient property within the state of the residence of said defendant, within the knowledge or belief of such non-resident plaintiff, his agent or attorney, wherefrom to satisfy such debt or demand: *And provided, also*, That no judicial process shall be issued against the estate of any person residing out of this state, by any one, whether a resident or non-resident, unless such process is grounded on an original attachment; or unless the leading process in the suit has been executed on the person of the defendant, when within this state.

§ 10. When two or more persons, not residing in this state, are jointly indebted, either as joint obligors, partners, or otherwise; then the writ or writs of attachment may be issued against the separate and joint estate of such debtors, or any of them, either by their proper names, or by the name and style of the partnership, or by whatever other name or names such joint debtors shall be generally reputed, known, or distinguished within this state, or against the heirs, executors, or administrators of them or any of them; and the lands, tenements, goods, chattels and effects, rights and credits of such debtors or any of them, shall be liable to be seized and taken for the satisfaction of any such debt or other demand, and may be sold to satisfy the same.

§ 11. Attachments may be levied on the defendant's goods and chattels, and the manner of executing an attachment shall be by the officer going to the house in which, or to the person in whose possession, the defendant's goods or effects are supposed to be, and then and there declaring, in the presence of one or more credible persons of the neighborhood, that he attaches the said goods or other effects; from and after which declaration, the goods, money and effects so attached, shall remain in the custody of the officer levying on the same, unless the defendant, his or her agent or attorney, or some other person, replevy the same, by giving bond and security in double the amount of the plaintiff's demand, conditioned that if the defendant be condemned in the action, he shall return the specific property attached, and in case he fail to do so, the securities will do it for him; or unless claim be made to the property levied on, and

Officer, how proceeded against for not returning order, or paying over money.

Attachments allowed where plaintiff and defendant are both non-residents.

Security to be given in the state.

Additional oath required.

Restrictions as to process against non-residents.

Attachments against non-resident partners, joint obligors, &c.

On what, and how levied.  
See post, Sec. 30.

Goods may be replevied.



Right of prop-  
erty may be  
tried. bond given to try the right of the same as in other cases, on which the same proceedings may be had as in trials of the right of property taken by virtue of a *feri facias*: in which cases the officer shall suffer the property to remain in the possession, and at the risk of the defendant or claimant. And the said replevin bonds, or bonds for the trial of the right of property, shall be lodged with the clerk or justice where the attachment is returnable; and should any such bond be forfeited according to its conditions, the officer taking the

Execution to  
issue on re-  
plevin bonds,  
or bonds for  
trial of right  
of property,  
when forfeit-  
ed. same shall forthwith enter thereon the necessary endorsement of forfeiture, and the clerk or justice shall immediately issue execution on the same against all the obligors therein; which duties of clerks and other officers shall be performed under all the penalties and responsibilities prescribed in cases of the forfeiture of forthcoming bonds, and bonds for the trial of the right of property in other cases: *Provided*,

Executions  
may be su-  
perseded. That for satisfactory cause shown, any of the judges may supersede such execution, either wholly or in part, and upon such security as the judge granting the same may deem proper.

Officer levy-  
ing attach-  
ment may re-  
quire indem-  
nity. § 12. Whenever any officer may be required to levy an attachment, such officer may require the plaintiff in the attachment, to execute to him a bond of indemnity, in order to secure such officer, if it should afterwards appear that the property levied on does not belong to the defendant.

Defendant  
may replevy  
any time be-  
fore judg-  
ment. § 13. Any person against whose estate an attachment has issued, his or her attorney, agent or factor, may, at any time before final judgment entered, or a writ of inquiry executed, upon giving special bail, replevy the estate so attached, and plead to issue, so that the plaintiff is not thereby delayed of his trial: *Provided*, That the defendant shall not be required to give special bail, before he is admitted to appear and plead.<sup>a</sup>

May plead,  
without spe-  
cial bail.  
<sup>a See post,  
Sec. 33.</sup>  
Lands of  
non-resi-  
dents may be  
levied on. § 14. If the inhabitant of any other government have no goods or chattels within this state, but has lands within it, the sheriff shall execute such attachment upon his lands or tenements, agreeably to the provisions of the act concerning executions; and in case of the death of any debtor residing out of the limits of this state, having lands or other property therein, the creditor resident within the state shall in like manner be entitled to recover by attachment, against the executors and administrators; and execution shall issue accordingly against the property so left within the state.

Executors  
and adminis-  
trators liable,  
&c. § 15. When any process in the nature of an attachment shall issue, and the defendant resides without the limits of this state, and has no agent or attorney within the same, no judgment shall be rendered on such attachment, until six months after the issuance thereof, or until the defendant be notified by conveying a notice to him or her by mail, when his or her residence is known, or by advertising the same in the manner the judge or justice issuing the attachment may direct, when the defendant's residence is unknown, which notice, it shall be the duty of the judge or justice to cause to be given, when the same can conveniently be done, and all proceedings on the attachment may, at the discretion of the court or justice, be stayed for such time as the circumstances of the case may require, not exceeding one year from the issuance thereof; and if the defendant appear, put in bail, and plead within the time limited for his or her appearance, his estate so attached shall be liberated, or if sold, the proceeds thereof refunded to him; and the garnishee or garnishees, if any, discharged; and it shall be lawful for the jury, in case of such non-residents, to give as damages legal interest upon the

Attachments  
against non-  
residents to  
be stayed. Notice to de-  
fendant.

Stay not to  
exceed one  
year.

Estate dis-  
charged on  
bail and  
plea.  
Interest dur-  
ing continu-  
ance.



plaintiff's recovery, during the time of such extraordinary continuances.

§ 16. After judgment on attachment against non-residents, the plaintiff shall, before sale, and after execution is awarded, find security, who shall undertake for him, that if the defendant in the attachment shall, within a year and a day next following, by himself or attorney, disprove or avoid the debt recovered by the plaintiff against him, or shall discharge the same with costs, that then the plaintiff shall restore to the defendant the goods or effects, or the value thereof, by the plaintiff attached and condemned, or so much thereof as shall be disproved or discharged, or else they will do it for him; which bond shall be taken and approved by the officer required to make the sale, and by him deposited with the other papers in the cause.

Plaintiff to give security before sale of non-resident's estate.

§ 17. The attachment law of this state shall not be rigidly and strictly construed; and in all suits commenced by original attachment, the plaintiff before or during the trial, shall be permitted to amend any defects of form in the original papers, should the judge or justice be satisfied that such defects were not made for the purpose of defrauding the defendant in such suit.

Plaintiff may amend defects of form

§ 18. The person whose goods or effects are attached, shall be called the defendant in the attachment, and the person in whose possession they are attached, shall be called the garnishee.

Who defendant, and who garnishee.

§ 19. When any officer shall serve an attachment in the hands of any person supposed to be indebted to, or supposed to have any of the effects of the defendant, he shall at the same time, summon such person as a garnishee in writing, to appear at the court or before the justice where the attachment is returnable, within the first four days of the first term of the court, if returnable to court, or at the time of the return of the attachment, if returnable before a justice of the peace, there to answer upon oath, what he or she is indebted to the defendant, and what effects of the defendant he or she has in his or her hands, and had at the time of serving the attachment, and what effects or debts of the defendant there are in the hands of any other, and what person, to his or her knowledge or belief: and it shall be lawful upon his or her appearance and examination, to enter up judgment and award execution against any such garnishee for all sums of money acknowledged to be due to the defendant, from him or her: and for all effects and estate of any kind, belonging to the defendant, in his or her possession or custody, for the use of the plaintiff, or so much thereof as may be sufficient to satisfy the debt and costs, and all charges incident to levying the same; and all goods and effects whatsoever, in the hands of any garnishee, belonging to any defendant, shall be liable to satisfy the plaintiff's judgment, and shall be delivered to the officer serving the attachment.

Garnishee shall be summoned.

Shall answer.

§ 20. Where any garnishee shall be returned by the officer, summoned in manner aforesaid, and shall fail to appear and discover on oath, as by this act is directed, it shall be lawful for the court, and if is required after calling the garnishee, to enter a conditional judgment against him, upon which a *scire facias* shall issue against such garnishee, returnable to the next term of the court, to show cause why final judgment should not be entered against him: and upon such *scire facias* being duly executed and returned, if such garnishee shall fail to appear according to the mandate thereof, and discover on oath in manner aforesaid, the court shall confirm such judgment, and award execution for the plaintiff's whole judgment and costs.

Proceedings against garnishee for contempt.

Judgment nisi and scire facias.

§ 21. When the attachment is returnable before a justice of the

Proceedings vs. garnishee



before justice of the peace.

peace, the garnishee shall be required to appear at the return of the attachment, and answer upon oath, as in the foregoing section: and in case any garnishee so summoned shall fail to appear and answer as above required, the justice shall enter judgment by default against such garnishee; and if the garnishee appear and answer within ten days, said judgment shall be set aside, and such judgment entered as the justice of the case requires; but if the garnishee fail to appear within ten days after judgment by default, the justice shall issue a second summons, commanding the garnishee to appear at a time certain; and if the garnishee fail to appear at said time, final judgment shall be entered against him, for the amount of the plaintiff's demand, and costs of suit, upon which execution shall issue.

Garnishee may discharge himself by delivering the property in twenty days after final judgment.

§ 22. In all cases when any garnishee may have in his possession any property belonging to the defendant, or be indebted to him in any specific property, he shall be at liberty at any time within twenty days after final judgment entered against him as garnishee, to deliver the same to the officer serving the attachment, or holding the execution, in discharge of himself, and the same shall be sold to satisfy the judgment against the defendant. And it shall be the duty of the proper officer, to demand the property deposited to be due from, or in the possession of any garnishee, at the usual place of residence of such garnishee, within a reasonable time after the final judgment rendered.

If on examination of garnishee, any other appears to have property, or be indebted, he shall be summoned.

§ 23. If, upon the examination of any garnishee, it shall appear that there is any of the defendant's estate in the hands of any other person who has not been summoned, or that any other person is indebted to the defendant, the court or justice shall, upon motion of the plaintiff, grant a judicial attachment, to be levied in the hands of such person or persons, so holding property of, or indebted to the defendant, who shall appear and answer, and be liable as other garnishees.

Defendant may contest garnishee's answer.

§ 24. The defendant may, in all cases, show, by competent testimony, that a garnishee is indebted to him in a greater amount than he is willing to admit on oath.

Plaintiff may contest answer.

§ 25. The plaintiff wishing to controvert the garnishee's answer, may do so by making oath, that he believes the same to be incorrect; whereupon, an issue shall be formed and tried as in other cases.

Allowance to garnishees

§ 26. Every garnishee shall be allowed out of the effects attached, reasonable satisfaction for his attendance; and where no goods are attached, the same shall be taxed against the party causing such garnishee to be summoned.

1835—(1)  
Sec. 1.  
Plaintiff in attachment to give security to his bond.

§ 27. No person shall sue out any original attachment, without giving security or securities to the bond required by law, which security or securities shall be approved of by the judge or justice granting such attachment, and be subject to all the liabilities of the principal in said bond.

1836—(1)  
Sec. 1.  
Attachment may issue against corporations chartered by other states.

§ 28. It shall be lawful to sue out process of original attachment against such corporate bodies as have been or may be chartered or located without the limits of this state, as well as against natural persons who are non-residents, or absent from this state; upon which attachment the same proceedings shall be had, and the same judgment shall be rendered against such foreign corporations, in all respects, as are provided by law against absent or non-resident individuals.

1837—(1)  
Sec. 2.  
Attachment may be levied on land as well as goods.

§ 29. Whenever an original attachment shall be issued for, or upon any of the causes now provided by law, it shall be lawful to levy the same upon any land belonging to the defendant in such attachment, by the officer whose duty it may be to levy or execute the same, in



the same manner that attachments are or may be, by law, authorized to be levied on goods, chattels or effects; and it shall also be lawful, in the execution of any attachment, to summon any person or persons as garnishees, as well as to levy said attachment on lands, goods, chattels or effects: *Provided*, that all summons of garnishment shall be issued in the manner now provided by law.

§ 30. It shall not be necessary for any original or judicial attachment to be levied, or executed, in the presence of one or more credible persons of the neighborhood, but it shall be lawful for any officer to execute the same without the presence of any other person.

§ 31. It shall not be necessary for any person suing out any original attachment, to state in the affidavit made upon suing out such attachment, that the plaintiff or plaintiffs in the same, is or are citizens of this state: *Provided*, that whenever any attachment shall be issued, in favor of any one not authorized by law to sue out the same, every such attachment shall be abated on plea of the defendant, supported by affidavit.

§ 32. It shall not be lawful for the defendant in any original attachment, to traverse, or put in issue, the grounds upon which the attachment issued: *Provided, however*, that whenever any original attachment shall have been wrongfully or vexatiously sued out, the defendant therein, may, at any time, commence suit against the plaintiff suing out the same, and recover any damages, which he may have sustained, or to which he may be entitled on account thereof, whether the suit commenced by attachment be ended or not.

§ 33. No defendant in attachment shall be permitted to replevy any goods, chattels or effects, that may be levied upon or attached, by virtue of such attachment, by entering into special bail; but every defendant in attachment, his agent, or attorney, desiring to replevy any goods, chattels or effects, that may be seized, levied upon, or taken, in virtue or pursuance of any attachment, shall be permitted to replevy the same, by entering into bond, with good and sufficient security, in double the sum for which such attachment shall have been issued, payable to the plaintiff or plaintiffs in such attachment, conditioned for the forthcoming and delivery of any such goods, chattels or effects to the proper officer, to satisfy such recovery as may be had in such judgment and may be rendered in favor of the plaintiff in such attachment, by the court trying the same, which bond shall be taken by the officer levying such attachment; and if, at any time after the final decision, in favor of the plaintiff, of any cause, in which any such replevy bond shall be given, the principal obligor in such bond shall fail or neglect, upon demand of him or either of his securities by the proper officer, to deliver up any personal property or effects so replevied, it shall be the duty of such officer to return the said replevin bond forfeited; whereupon the said bond shall have the force and effect of a judgment, and execution may issue thereon, against all the obligors to said bond, or any or either of them, for the amount of the judgment actually recovered by the plaintiff in the suit, in which such bond was taken, with all cost thereon: *Provided*, that a return by the officer, that neither principal, nor any security in such replevy bond, can be found in the county where the attachment was levied, shall be equivalent to personal demand in all respects.

§ 34. When a suit shall be commenced in any circuit or county court of this state, and the defendants, or any one or more of them, shall abscond or secrete him, her or themselves, or shall remove out of this state, or be about to remove out of this state, or shall be about to remove his, her or their property out of this state, or be about to

*Ib. Sec. 3.*  
May be executed without the presence of any one but officer.

*Ib. Sec. 4.*  
Plaintiff's affidavit need not state he is a citizen of the state.

*Ib. Sec. 5.*  
Defendant shall not traverse ground of attachment, but may sue, at any time, for wrongfully suing out.

*Ib. Sec. 6.*  
Defendant in attachment not to replevy by giving special bail,

but shall give bond for the delivery of the goods, chattels, &c. levied on.

If goods, &c. not delivered after final judgment for plaintiff, bond to be returned forfeited, and have the force and effect of a judgment against principal and securities.

*See ante*  
§ 13.

*Ib. Sec. 8.*  
Attachment may issue in aid of suit at common law, if defendant ab-



second, &c. or dispose of his property fraudulently.

To be returned with bond and affidavit, filed with the original papers and be part thereof.

*Ib. Sec. 9.* Property, so attached, may be replevied as in other cases—with like consequences for failure to deliver the property, after judgment and execution.

*Ib. Sec. 10.* Sheriff to summon garnishees, as under original attachments.

*Ib. Sec. 11.* Judicial attachments may issue in suits by petition and summons, on return of *non est inventus*, and proceedings after writ issued to be as required in cases of original attachment.

dispose of his, her or their property fraudulently, with intent to avoid the payment of the debt or demand sued for, on oath thereof being made by the plaintiff, his agent, attorney or factor, before any officer authorized by law to issue original attachments, and oath being also made of the amount or sum due, and that an attachment is not prayed to be sued out for the purpose of vexing or harrassing the defendant or defendants, it shall be the duty of such officer, on the plaintiff, his agent, attorney or factor entering into bond with security, to be approved of by such officer, to the defendant or defendants, or any of them, as the case may be, in double the amount or sum sworn to, conditioned to pay the said defendant or defendants, or any of them, all such damages and costs as he, she or they may sustain by the wrongful suing out an attachment, forthwith to issue an attachment in favor of the plaintiff against the estate of the said defendant or defendants, directed to any sheriff of the state of Alabama, returnable to the court in which suit had been originally commenced as aforesaid; which said attachment shall be issued, executed and returned, as near as may be, in the same manner as original attachments, and the said affidavit and bond and attachment, when returned, shall be filed with the papers in the original suit, and shall constitute a part thereof, and the plaintiff in said suit may proceed to judgment as in other cases, and the original suit shall not be delayed.

§ 35. Any property, which may be attached under the provisions of the eighth section of this act, may be replevied, as in other cases of attachment, and after judgment shall be rendered and execution issued against the defendant or defendants, if any property replevied shall not be delivered to the sheriff or his deputy, holding such execution, within ten days after the demand made thereof, of the principal or any security in the bond given on replevying said property, it shall be the duty of the said sheriff or his deputy, to certify the same to the clerk issuing such execution, whereupon the said replevin bond shall be deemed forfeited, and it shall be the duty of the said clerk, forthwith to issue an execution against the principal and securities in said replevin bond, for the whole amount of the plaintiff's judgment, with costs, to which he may be entitled; and when judgment shall be rendered, execution may be issued in the usual way, which shall first be levied on the property attached, if to be had, and then upon any other property of the defendant or defendants, until a sufficient amount be levied upon, to pay the entire amount of the execution, including costs.

§ 36. When an attachment shall issue under the provisions of the eighth section of this act, it shall be the duty of the sheriff, to summon any person or persons, who may be supposed to be indebted to the defendant or defendants, or to have effects of the defendant or defendants in his or their hands, in the same manner as when original attachments are issued.

§ 37. Judicial attachments may be issued in cases instituted by petition and summons, as well as in cases instituted by writs of *capias ad respondendum*, whenever the summons shall be returned *non est inventus*; and in every case of judicial attachment, the proceedings therein, subsequent to the issuing of the writ of attachment, shall be the same, as near as may be, by the parties, plaintiff and defendant, as are or may be required, in cases of original attachment, and the same may be levied, by garnishment, on effects in the hands of debtors of the party defendant, as well as on any of his goods and chattels, lands and tenements, precisely as original attachments; and the goods and chattels, levied on, may be replevied by bond and security,



as provided for above, which bond, if the property replevied be not delivered to satisfy the judgment as aforesaid, shall have the same effect as in cases of original attachment, and execution thereon may be issued against the principal and securities, or either of them, as aforesaid.

§ 38. All original or judicial attachments and summonses of garnishment may be issued, directed "To any sheriff of the state of Alabama," and they may be levied or served in any county of the state, and, when necessary, as many branches thereof may be issued in the same case, as may be necessary to cover the effects or property of the party defendant, in any counties of the state.

*Ib. sec. 12.* All attachments may be directed "to any sheriff of the state of Alabama" and branches thereof may issue.  
1840—(2)

§ 39. When a garnishee, in any case of judicial or original attachment, shall answer, that previous to the time of such answer, he or she has received notice of the assignment or transfer of the debt or property, in respect to which the garnishment is issued, it shall not be lawful for the court to render judgment against the said garnishee, on the ground of the invalidity of the assignment or transfer of the debt or property; but the court, before which the garnishment is pending, shall suspend proceedings against said garnishee, until the question is litigated, as provided for in the following sections of this act.

*Sec. 1.* When garnishee answers, he has had notice of assignment, judgment to be suspended till trial.

§ 40. On the coming in of the answer of the garnishee, as provided for in the first section of this act, the court, (if the plaintiff shall desire it,) shall cause a notice to issue to the party to which the assignment or transfer is alleged to have been made, calling upon the said party, to contest with the plaintiff the validity of the said transfer or assignment, which notice shall be served at least five days before the matter shall be heard; and if the question shall be determined against the party, claiming such debt or property so alleged to be transferred, then the court shall render judgment final against the garnishee, reserving to said garnishee his expenses, as is now provided for by law; and also, reserving to the said garnishee, and to all the parties contesting said question, the right of appeal or writ of error.

*Ib. Sec. 2.* Upon such answer, notice to issue to alleged assignee, &c. to contest the validity of assignment or transfer.

§ 41. If two notices shall issue to the party alleged to be the assignee or transferee of any such debt or property, and the same shall be returned *not found*, then the court, before which said garnishment is pending, shall proceed to render such judgment as is right in the matter, having due regard to the laws regulating assignments, and judicial and original attachments.

*Ib. Sec. 3.* If two notices are returned "not found," court to render judgment.

§ 42. This act shall not interfere with the powers of courts to render *nisi* and *final* judgments against garnishees, for failure to answer a summons of garnishment, as the law now provides.

*Ib. Sec. 4.* Judgments, nisi or final, still allowable.

§ 43. In case the transfer shall be found legal, the garnishee shall be discharged, and costs shall be rendered against the plaintiff; and if the claim is found against the claimant, the costs shall be given against said claimant.

*Ib. Sec. 5.* Costs, how adjudged.

§ 44. When a garnishee shall be brought before any court, on summons, in judicial or original attachments, it shall be lawful for the party, at whose instance the summons is issued, to file interrogatories, embracing the grounds now required to be answered by garnishees in the laws regulating judicial and original attachments, which interrogatories shall be answered or demurred to by the garnishee, and which answer or demurrer shall be determined, as is now provided for by law; and it is provided herein, that nothing contained in this act shall prevent the court from receiving and requiring additional answers from a garnishee, or requiring and receiving re-

*Ib. Sec. 6.* Interrogatories may be put to garnishee, which he shall answer or demur to.

Additional interrogatories may be filed and answers re-



quired, by consent.

*Ib. Sec. 7.*  
If alleged assignee is a non-resident, court to publish 6 months before trial.

1840—(3)  
*Sec. 1.*  
Attachment may issue in favor of the state bank or any branch, on oath of president, cashier, or other officer or agent.

*Ib. Sec. 2.*  
Said banks may take out such attachment on application of any endorser or security.  
*Ib. Sec. 3.*  
Said banks not required to give bond.

*Ib. Sec. 4.*  
Said banks may sue by attachment in county of location.

Liable for wrongfully suing out.

ing the said answers, verbally, in open court, on consent of all the parties concerned.

§ 45. In case the party, who shall be alleged to be the assignee or transferee of the debt or property embraced in the garnishee's answer, is a non-resident, then the court shall order publication for six months, before proceeding to consider the question litigated between the parties.

§ 46. In all cases, where it may become necessary for the bank of the state of Alabama or either of its branches, to sue out an original attachment, it shall be lawful to sue out such attachment, upon the oath of the president, cashier, or other officer or agent of such bank, that he has reason to believe, and does believe, that the person or persons, against whom such attachment is prayed, absconds or secretes him or herself, or that he or she resides out of this state, or that he or she is about to remove out of this state, so that the ordinary process of law cannot be served upon him or them, or that he, she, or they are about to remove his, her, or their property out of this state.

§ 47. Said banks are hereby severally authorized to take out attachments, according to the first section of this act, on the application of any endorser or security to the bill, note or other demand, and on satisfactory showing of such endorser or security, on oath or otherwise, that either of the grounds specified in this act exists.

§ 48. Said bank and each of its branches are hereby authorized to sue out original attachments without giving bond, as is now provided by law, in cases where individuals sue by attachments.

§ 49. In all cases, where said bank or its branches are now, by law, authorized to sue in the counties where they are located, attachments, sued out by said banks, shall be made returnable in the counties where they are located, respectively: *Provided*, That nothing in this act shall be so construed, as to exempt said bank or branches from the suit of any person, who may be damaged by wrongfully suing out such attachment.

## ATTORNEYS.

1807—(4)  
Attorneys to be licensed and sworn.

Oath of office.

Penalty for practicing without license.

Convicted felons not admitted to practice.

§ 1. No person shall be permitted to practice as counsel or attorney at law, in any of the courts of this state, without previously producing to the court a license; and, in the presence of such court, shall take an oath to support the constitution of the United States, and also the following oath of office:—"I, A. B. do solemnly swear (or affirm) that I will honestly demean myself in the practice as counsel or attorney; and will, in all respects, execute my office according to the best of my knowledge and abilities." And if any person shall presume to practice as counsel or attorney, without being licensed and qualified as aforesaid, he shall forfeit the sum of two hundred dollars for every cause he shall prosecute or defend, in any court in this state, one half to the use of the informer, and the other half to the use of the state, to be recovered by action of debt in any court of record.

§ 2. Every person who hath already been, or shall hereafter be, convicted of any felonious crime, shall be incapable of obtaining such license; or if licensed, the judges of any court in which such



person may practice, on proof thereof being made to them, may suspend his license.

§ 3. If the judges of the superior courts, from their own observation, detect any mal-practice in the said courts, in any counsel or attorney of those courts; or if complaint in writing be made to them of such mal-practice in the said courts, or in the county courts of any county, the party accused shall be summoned to show cause why an information should not be filed against him: and if such information should be ordered, and the counsel or attorney so offending should be found guilty of the matter therein charged, the said judges of the superior courts may either suspend his license during a certain time, or vacate it altogether, as they shall judge most proper; first ordering a jury to be empanelled for the trial of such information. And the judges of the superior and of the county courts, shall have power to fine any attorney for misbehavior or contempt offered to them, and may cause any attorney practicing in said courts, to find security for his good behavior.

Judges of superior courts may suspend or vacate license for malpractice.

After information filed,

and jury empanelled.

Liability of attorneys for contempt, &c.

§ 4. If any suit shall be dismissed for the non-attendance or neglect of any attorney, practicing either in the superior or county courts, not having a just and reasonable excuse, it shall be at his cost. And he shall moreover be liable for all damages his client may sustain, by such dismissal, or any other neglect of his duty, to be recovered in any court of record.

Attorneys liable for neglect.

§ 5. Every attorney receiving money for his client, and refusing to pay the same when demanded, shall be proceeded against in a summary way, on notice before any court of record, in the same manner as sheriffs are, or may be liable to be proceeded against, for money received on execution.

Proceedings against attorney, who refuses to pay over money received,

§ 6. In all cases where the sheriff is, or may be authorized by law, to take the engagement of an attorney endorsed upon the writ, that he, such attorney, will appear for the defendant or defendants, every attorney thus entering into such engagement, who shall fail to enter an appearance agreeably thereto, shall forfeit to the defendant or defendants twenty-five dollars; for which judgment shall be immediately entered, and execution issued thereon.

or fails to enter an appearance.

§ 7. The judges of the superior courts, and of the county courts, shall not suffer more than two attorneys to argue on any side, in any suit.

Only two can argue on one side.

§ 8. If any attorney, or other person practicing as an attorney, shall presume to appear under any power of attorney, made before action brought, for confessing or suffering judgment to pass by default or otherwise, for any defendant in any court of record within this territory, he shall for every such offence, forfeit and pay two thousand dollars to such defendant, for his or her own use; to be recovered with costs by action of debt or information, in any court of record; and moreover shall be liable to an action for damages, at the suit of the party aggrieved.

Penalty for acting under power of attorney made before action brought.

§ 9. No justice of the peace, sheriff, or under-sheriff, or clerk of any court, shall appear or plead as attorney for any person or persons whatsoever, in the court of the county whereof he is a member, officer or clerk, (except only as general attorney for any person or persons not residing or being within this territory,) under penalty of being fined by such court, in the sum of fifty dollars for every such offence, to the use of the same county, towards lessening the levy thereof.

Certain civil officers not to appear as attorneys.

§ 10. Hereafter no person shall be permitted by any court to practice therein as counsellor or attorney at law, unless he shall have ob-

1819—(7)  
Sec. 1.  
Supreme



court to grant licenses.

a See § 17.

Proviso.

fb. Sec. 3. Officers of court restrained from practicing as attorneys.

1820—(1) Sec. 1. Persons who have presided as judges, to be licensed without examination.

1821—(3) Sec. 1. Two judges of circuit court may grant licenses.

1821—(6) Sec. 4. Judge of county court may practice in circuit court of his own county. Proviso.

1824—(7) Sec. 1. And in the several courts of this state. Proviso.

1828—(25) Sec. 1. Judge of county court not to practice where administrator, &c. is concerned.

1830—(41) Sec. 1. License to be granted to lawyers of other states without ex-

tained a license from the supreme court of this state;<sup>1</sup> and it shall be the duty of the said court, when application shall be made by any person for a license as aforesaid, on his producing satisfactory evidence that he sustains a good moral character, to examine or cause to be examined,<sup>2</sup> in open court, the person so applying; and if, after such examination, it be the opinion of said court that he is duly qualified, it shall be the duty of the judges thereof to grant a license under their hands and seals, which shall be attested by the clerk of said court: *Provided*, That nothing in this act contained shall be so construed, as to affect any person who may have obtained a license from the governor of the Mississippi Territory, previous to the division of the same, and was an inhabitant of this state at the time of the adoption of the constitution; or from the governor of the Alabama Territory, or of this state; but such person shall be permitted to practice as counsellor or attorney at law, in any court of law or equity within this state, by virtue of such license.

§ 11. No judge or justice of any court, or sheriff, or under sheriff, shall appear or plead as attorney in any court in this state; and no clerk or deputy clerk of any court, shall practice as counsellor or attorney in the court of which he is clerk or deputy clerk, under the penalty of being fined by such court, in the sum of fifty dollars for every such offence, to be applied to the use of the county in which the offence shall have been committed.

§ 12. When any person shall make application for a license to practice, and it shall be known to the judges of the supreme court, that he has presided as a circuit judge in this state, or the Mississippi Territory, it shall be the duty of the said court to grant him a license without examination.

§ 13. Any two judges of the circuit courts in this state, may grant licenses to attorneys to practice in the circuit or county courts.

§ 14. Any judge of the county court, who has been regularly licensed to practice law in this state, shall be allowed to practice in the circuit court of the county in which he resides: *Provided*, That he shall not be engaged directly or indirectly in any cause which may have been determined or tried before him.

§ 15. Such judges of the county courts, as have been licensed to practice as attorneys at law in this state, are hereby authorized to practice law in the several courts of this state: *Provided*, That they shall not be absent at the time of holding any court, or on any return day, required by law for them to hold or appoint.

§ 16. It shall not be lawful for the judges of the several county courts of this state, to appear or practice as attorneys at law, in any suit, for or against any administrator, executor, or guardian of the county whereof he is judge, nor shall he appear or practice as an attorney in any cause, matter, or suit, for or against any public officer in his official capacity, wherein it is the duty of such judge to take a bond for the faithful performance of such office, trust, or duty.

§ 17. When any person, applying to the supreme court of this state for a license to practice in the courts of the state, shall produce to the court evidence of good moral character, and shall also produce a license, authorizing such person to practice law in the

<sup>1</sup>So much of this section as restricts the power of granting licenses to the Supreme Court, is repealed.—See § 13.



highest court of any of the states in the Union, the said court shall be authorized to grant such person a license to practice law as aforesaid, without examining, or causing such person to be examined, in open court: *Provided*, that this act shall not be construed, to dispense with the oaths now required to be taken by attorneys and counsellors at law.

§ 18. Resident lawyers of the state of Mississippi, are hereby authorized to practice law in the circuit and county courts of this state, upon motion, and satisfactory evidence shewn to the court, that the applicant is a practicing lawyer of the state of Mississippi; and all such applicants shall take and file in the clerk's office, such oaths as are required of lawyers in the state last aforesaid.

§ 19. Any resident lawyer of the state of Georgia is hereby authorized to practice law in the circuit and county courts of this state, upon producing in any court, where he may desire to practice, a license granted agreeably to the laws of Georgia.

§ 20. Any person, who may have obtained a license to practice law in the territory of Florida, is hereby authorized and licensed to practice in the several courts of law of the state of Alabama.

1835—(2)

Sec. 1.

Lawyers of Mississippi may practice in circuit or county courts of this state, on motion, &amp;c.

1836—(2)

Sec. 1.

Lawyers of Georgia may, in like manner, practice.

1841—(1)

Sec. 1.

Also, lawyers of Florida.

## ATTORNEY GENERAL AND SOLICITORS.

§ 1. There shall be an attorney general for the state, and as many solicitors as the general assembly may deem necessary, to be elected by a joint vote thereof, who shall hold their offices for the term of four years, and shall receive for their services a compensation, which shall not be diminished during their continuance in office.

§ 2. It shall be the duty of the attorney general to keep his office at the place designated for the seat of the state government, and to conduct and prosecute in the supreme court, all suits in which the state may be concerned, and to give his opinion and advice in writing, or otherwise, on any question of law, when required by the governor, or when requested by the comptroller of public accounts, or the state treasurer, concerning matters which relate to their respective offices; and he shall also perform the duties of solicitor in the judicial circuit, embracing the place designated for the seat of the state government, and shall receive in addition to the salary established by law, the fees for prosecutions in such circuit, and in the supreme court, which are allowed to solicitors for the like services.

§ 3. There shall be elected a solicitor for each judicial circuit in this state, (except the judicial circuit assigned to the attorney general) whose duty it shall be to prosecute in such circuit, all offenders against the state, and all civil actions in which the state may be concerned, (except before the supreme court,) and who shall be entitled to receive, in addition to the salary established by law, the following fees: upon all convictions on indictments under the sections of this code, which inhibit the keeping or exhibiting of any gaming table or bank, or which makes it penal, for the owner or occupant of any house to permit or suffer the same to be used, for the keeping or exhibition of any gaming table or bank, the attorney general or solicitor shall be entitled to a fee of one hundred dollars; upon convictions on indictments under any other provision of the law against gaming, the attorney general or solicitor shall be entitled to a fee of forty

Con. Ala.

Art. 5.

Sec. 18.

Elected by general assembly.

1819—(9)

Sec. 1.

Attorney-general's residence and duties.

Emoluments.

Ib. Sec. 2.

Solicitors. Their number and duties.

Emoluments.

[1841—(11) chap. 8, § 30, "Penal Code."]



dollars; and upon all convictions, in which the punishment shall be imprisonment in the penitentiary, the attorney general or solicitor shall be entitled to a fee of twenty dollars; and on all other convictions, to a fee of five dollars, to be taxed in the bill of costs, and paid by the party convicted.

*Id.* Sec. 3.  
Attorney  
general or so-  
licitor failing  
to attend,  
the court  
may appoint  
an attorney  
to prosecute.  
Compensa-  
tion therefor.  
1827—(30)

§ 4. If the attorney general, or any solicitor shall fail to attend at either of the courts when it may be his duty to attend, the judge or judges of the same are hereby authorized, from time to time, as he or they may think fit, to employ an attorney to prosecute for the state, who shall be paid by the attorney general or solicitor, in whose stead he may act, such compensation as shall be directed by the court before whom the services shall be rendered.

Sec. 1.  
Solicitors to  
reside in  
their circuits

§ 5. It shall be the duty of the several solicitors in this state, to reside within the judicial circuits for which they may have been elected.

*Id.* Sec. 2.  
On failure,  
office vaca-  
ted, and to be  
filled by the  
governor.

§ 6. If any solicitor fail to remove into and reside in his circuit, as aforesaid, he shall vacate his said office, and it shall be the duty of the judge residing in the circuit for which such solicitor has been elected, to notify the governor of such non-residence, who shall forthwith fill such vacancy: *Provided*, that twelve months be allowed any solicitor residing out of the circuit in which he holds his office, to remove into the same.

*Proviso.*

## AUCTIONEERS.

1818—(16)  
Sec. 2.  
Penalty for  
exercising  
the trade of  
auctioneer  
unlawfully.

§ 1. No person shall exercise the trade or business of an auctioneer, by the selling of any goods, wares, or merchandise whatsoever, by auction, or any other mode of sale, whereby the best or highest bidder is deemed to be the purchaser, unless such person shall have a license, issued pursuant to the directions of this act,<sup>1</sup> on pain of forfeiting for every such sale at auction, the sum of twenty dollars, together with the sums or duties payable by this act upon the goods, wares, and merchandise so sold: *Provided, however*, That nothing herein contained shall be construed to require a license for the sale, at auction, of any estate, goods, chattels, or other thing, which, by this act, are not made liable to duty, or exempted from duty.

1824—(26)  
Sec. 1.  
Number of  
auctioneers  
in Mobile  
and Madison  
six:—other  
counties,  
three.

§ 2. The number of auctioneers, hereafter to be appointed and licensed for the city of Mobile, shall not exceed six, and for each of the other counties in this state, the number shall not exceed three, except Madison county, in which the number may be six, who shall be appointed and licensed in the same manner, shall hold their appointments for the same period, and be subject to the same restrictions and obligations, as are provided by the act concerning the appointment of public officers, passed December twentieth, 1820, and the act regulating sales at auction, passed November twenty-first, 1818.<sup>3</sup>

*Id.* Sec. 2.  
To give  
bond.

§ 3. Every auctioneer hereafter to be appointed and licensed for said city, shall give bond, with good and sufficient securities, in the penal sum of ten thousand dollars, and for each of the other counties

<sup>1</sup> For the mode of appointing auctioneers, and their term of office, see "County Officers,"—§ 3, 4, and 7.

<sup>2</sup> See "County officers,"—1820—(26).

<sup>3</sup> The act from which the preceding section is taken, and which concludes this title.



in this state, in the penal sum of two thousand dollars, to be approved of by the judge of the county court of the county in which the license or licenses shall be granted, made payable to the governor for the time being, and his successors in office, to be filed in the office of the comptroller of public accounts, conditioned that he will render quarter yearly in the city of Mobile, that is to say, on the first Mondays of January, April, July, and October, of each year, during the term of his appointment, and in the other counties in this state, at the times required by the law relating to sales at auction, passed in eighteen hundred and eighteen,<sup>1</sup> to the assessor and collector of the county in which he may be appointed, an accurate and particular account, in writing and on oath, of all sales of goods, wares, and merchandise, subject to auction duties, made by him during the three months immediately preceding the date thereof; and that he will, thereupon, immediately pay over to the said assessor and collector of taxes, the amount of duties accruing upon such sales.

§ 4. If any such auctioneer shall fail to make the returns or the payments hereby required to be made, in the manner and at the periods respectively therein prescribed, he shall, in addition to the penalty contained in his official bond, forfeit for every such failure, the sum of five hundred dollars, to be levied and collected in the manner hereinafter provided for.

§ 5. The duties in arrear on sales at auction, and all forfeitures accruing under this act, may be collected in the manner provided by law for the collection of the state and county taxes; and the assessor and collector of taxes, for the county in which he may be appointed, shall receive the same rates of compensation on all collections of auction duties, as he is entitled to receive on the collection of the state and county taxes.

§ 6. The accounts to be rendered, and the duties to be from time to time paid as aforesaid, by any auctioneer, shall be rendered and paid to the tax collector of that county in which such sales shall have been made, and every auctioneer shall make oath or affirmation, according to the best of his knowledge and belief, to the truth of every account, which he shall render before the officer to whom such

Condition of bond.

1b. Sec. 3. Penalty for failing to make returns or payments.

1b. Sec. 4. Mode of collecting duties in arrear and forfeitures.

1818—(16)  
Sec. 4. Duties to be paid to tax collector, and account to be rendered on oath.

<sup>1</sup> The act of 1818, here referred to, recites the condition of the bond required to be given by auctioneers, as follows:—"Conditioned that he will, on the first day of January and July, in each year, while he shall continue to exercise the said trade or business, render to the person or persons, who, under this act, shall be authorized to receive the same, a true and particular account in writing, of the moneys or sums for which any goods, wares and merchandise, made liable to duty by this act, have been sold at every sale at auction by him made, and of the several articles, lots and parcels, which shall have been sold, the price of each article, lot, or parcel in every such sale, by whom bought, that is to say: first, from the date of such bond until such of the aforesaid days as shall accrue next thereafter; and thenceforth from the day to which an account shall have been last rendered, until such of the said days as shall next thereafter ensue; and so on in succession, from one of the said days to another, so long as he shall continue to exercise his said trade or business; and also, shall pay over all such sums of money as may arise upon said sales, in manner as shall be hereinafter provided, which sums he is hereby authorized and directed to retain out of the produce of each sale made as aforesaid."

An act passed January 26th, 1829, entitled "An Act the better to secure the collection of the state revenue," requires all auctioneers without distinction, to render an annual statement to the comptroller of public accounts, by the second Monday in December, of all sales subject to auction duties, made between the first day of November immediately preceding, and the first day of November, of the year previous. (See "Taxes,"—§ 89.) So much, therefore, of the acts of 1818, and 1824, as recites the duty of making a quarterly or semi-annual return, among the conditions of the auctioneer's bond, is impliedly repealed.



Sales to be entered in a book.

Forfeiture.

*Ib.* Sec. 5.  
Commission.

*Ib.* Sec. 6.  
Penalty for false oath or affirmation.

*Ib.* Sec. 7.  
Collector to prosecute and pay into the treasury.

account shall be rendered, and who is hereby authorized to administer the said oath or affirmation; in default of which, such account shall not be deemed to be duly rendered, according to the condition of the bond of such auctioneer; and to the end that such accounts may be accurately kept and rendered, it is hereby made the duty of every auctioneer, to enter from day to day, as often as any sale shall be made, in a book, or on paper, to be kept by him for that purpose, the amount and particulars of the respective sales by him made, which book or papers shall, at all reasonable times, upon request made, be submitted for examination, to the officer to whom the account is to be rendered and duties paid, on pain of forfeiting, for every refusal to comply with such request, the sum of twenty dollars.

§ 7. Every auctioneer, out of the proceeds of the duties which he shall retain and pay as aforesaid, shall be allowed a commission of one per centum upon the amount thereof, for his trouble in and about the same.

§ 8. If any auctioneer shall willfully swear or affirm falsely, touching any matter, hereinbefore required to be verified by oath or affirmation, he shall suffer the pains and penalties, which by law are prescribed for willful and corrupt perjury; and shall moreover forfeit his office, and be incapable of afterward holding any office under this state.

§ 9. It shall be the duty of the tax-collectors aforesaid, in their respective counties, to collect the duties imposed by this act, and to prosecute for the recovery of the same, and for the recovery of any sum or sums, which may be forfeited by virtue of this act, and pay the same into the state treasury; and all fines, penalties, and forfeitures, which shall be incurred by force of this act, shall be sued for and recovered in the name of the state of Alabama, or of the tax-collector within whose county any such fine, penalty, or forfeiture shall have been incurred, by bill, plaint, or information; one moiety thereof to the state, and the other moiety thereof to the use of the person, who, if a tax-collector, shall first discover, if other than a tax-collector, shall first inform of the cause, matter or thing, whereby any such fine, penalty, or forfeiture, shall have been incurred, before any court of law within the state, having jurisdiction thereof.

NOTE.—For the duties chargeable on goods, &c. sold at auction, See "Taxes," § 11.

## BAIL, IN CIVIL CASES.

1839—(1)  
Not lawful to take the body in custody, on civil demand, except for fraud.  
If plaintiff or his agent make oath of amount of indebtedness, and that debtor is about to ab-

§ 1. It shall not be lawful to take the body of any person in custody, to answer for a civil demand, except in cases of fraud, as hereinafter prescribed.

§ 2. If a plaintiff or his agent shall make oath, before any person authorized to administer the same, of the amount of the indebtedness of any one to such plaintiff; and that such debtor is about to abscond, or such debtor has fraudulently conveyed, or is about fraudulently conveying, his estate or effects, or such persons has moneys liable to satisfy his debts, which he fraudulently withholds, then, in that case, it shall be lawful to arrest the body of such debtor, either by bail pro-



cess, *capias ad satisfaciendum*, or other process to arrest the body, known to the law; but in case the debtor thus arrested shall make oath, before any person authorized to administer the same, that the particular ground upon which he is arrested is untrue, and that he has neither estate, effects, or moneys, whereby to satisfy the debt, or liable for the same, then he shall be released by the arresting officer immediately.

§ 3. When a plaintiff, or his agent, shall take either of the alternative oaths required in the last section, and the same shall not be controverted by the oath of the debtor, then such debtor may discharge himself from said arrest, by rendering a schedule of all the estate, effects, choses in action, and moneys which he has in possession, or is entitled to, and taking the subjoined oath, before any one authorized to administer the same, to wit: "I, (here repeat the name,) do solemnly swear, that I have not any estate, real or personal, to the amount of twenty dollars, except what is herewith rendered, and such goods and chattels, which are by law exempted from execution; and that I have not any other estate, now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to defraud my creditors: So help me God." And if the plaintiff shall desire to controvert the truth of such oath or schedule, then, on making oath that he believes the same to be untrue, any justice of the peace shall be legally authorized to summon a jury of twelve men, *instantly*, to try the question, whether said oath or schedule is untrue and fraudulent or not, and said jurors shall be liable to the challenge of either party, as in civil cases.

§ 4. In the event that a debtor shall be convicted, by the verdict of a jury, of rendering a false or fraudulent schedule of his estate, he shall be sentenced to imprisonment for a period not exceeding one year; and be forever debarred the beneficial provisions of this act: *Provided*, that either the creditor or debtor may appeal to the circuit or county court, by entering into bond and surety; the creditor, to pay all damages, which shall accrue to the debtor, and be assessed by the jury by whom the appeal shall be tried; and the debtor, that he will personally appear at such court and abide its judgment.

§ 5. In all actions sounding in damages, it shall be lawful for the clerk of the court in which such action is commenced, or any judge of the county court where such suit may be instituted, to order the defendant or defendants to be held to bail in such sum as may seem proper, on the affidavit of the plaintiff, or other credible person, setting forth satisfactory reasons for praying such order: *Provided, however*, That it shall be the duty of the court to which such writ may be returned, on application at the first term thereof after the commencement of such action, supported by satisfactory proof, to discharge the bail taken under such order, or reduce the amount for which bail may have been required.

§ 6. When suit shall be commenced in any of the courts of this state, or before any justice of the peace, and the defendant or defendants shall not be held to bail, and the plaintiff or plaintiffs shall afterwards deem it necessary for the security of his, her, or their claim or demand, the clerk of the court or justice of the peace, where such suit shall be pending, shall, on the plaintiff, his, her, or their attorney or agent making the affidavit required by the existing laws, at any time previous to final judgment, issue a writ of *capias ad respondendum*, to the sheriff, coroner, or constable, requiring him to arrest and detain the body of the defendant or defendants in his custody, until he or they shall put in bail for his or their appearance, or be otherwise dis-

second, &c. or fraudulently convey his estate or effects—then the body may be arrested—but, if the debtor deny the ground stated, to be discharged. If debtor do not take such oath, he may discharge himself by rendering a schedule of his estate, &c. and taking oath prescribed.

Penalty for rendering a false schedule.

Creditor or debtor may appeal.

1818—(2)  
Sec. 11.  
In actions sounding in damages, clerk may order defendant to be held to bail.  
Court may discharge or reduce such bail at return term.

1827—(12)  
Sec. 1.  
Defendant may be held to bail after suit brought.



Second *capi-* charged by due course of law: *Provided*, That the said plaintiff, so  
as to be at applying, shall pay the expense of issuing said writ of *capias ad re-*  
plaintiff's *spondendum*, and the execution thereof, unless the plaintiff making  
expense, un- application for a new writ requiring bail, make affidavit that the de-  
less, &c. fendant is about to abscond from the county.

*Ib. Sec. 2.*  
Bail in suits  
by petition  
and sum-  
mons.

§ 7. In all suits, where the process is by petition and summons, (as now allowed by law,) the defendant or defendants may be held to bail by an affidavit for that purpose, in like manner, and under the same rules and regulations; and such bail shall be liable in the same way as if such suit had been commenced by writ of *capias ad respondendum*.

1832—(13)  
Sec. 2.  
In *qui tam*  
actions.

§ 8. In all *qui tam* actions, the defendant or defendants may be held to bail in the same manner as bail is now required by law in actions of debt and assumpsit.

1827—(20)  
Sec. 1.  
Plaintiff de-  
manding bail  
to give secu-  
rity for costs.

§ 9. In all cases, when any plaintiff or plaintiffs may wish to hold any defendant or defendants to bail, in civil cases, such plaintiff or plaintiffs shall give security for the costs of suit.

1807—(9)  
Sec. 2.  
Defendant  
unlawfully  
held to bail,  
how dis-  
charged.

§ 10. Every person, unlawfully held to bail, may be discharged therefrom, on motion to the court, into which the writ is made returnable, and filing common bail. And in every action wherein bail is not required, the process may be by *capias ad respondendum*, and it shall be endorsed thereon by the clerk or plaintiff's attorney, that "no bail is required," to which an appearance may be effected by filing common bail. And when any writ shall issue from any of the said courts, or any warrant from a justice of the peace, whereupon bail is required, the sheriff or other officer, to whomsoever the same may be directed, shall take a bail-bond with sufficient security or securities in the penalty of double the sum for which bail is required by the endorsement on such writ or warrant; which said bond, the sheriff or other officer shall return with such writ. (1) And in case the sheriff or other officer shall neglect to take such bond, or the bail returned shall be held insufficient, on exception taken and entered, the same term to which such writ shall be made returnable, the sheriff or other officer, having due notice of the taking exception, shall in either case be deemed and stand as special bail; and the plaintiff may proceed to judgment against such sheriff or other officer, as in other cases against special bail. (2)

Sheriff to  
take bail-  
bond in-  
double the  
amount en-  
dorsed.

Or failing, to  
stand special  
bail on ex-  
ception tak-  
en, and no-  
tice.

*Ib. Sec. 3.*  
Sheriff to as-  
sign bail  
bond  
Form of as-  
signment.

§ 11. All bail bonds, returned to any of the said courts, shall be assigned by the sheriff, or other officer returning the same, by endorsement thereon, in the following form, to wit: "I, A. B. sheriff (or coroner, as the case may be,) of the county of \_\_\_\_\_ do hereby assign the within obligation and condition to C. D., his executors and administrators, to be sued for, according to the statute in such cases made and provided. In witness whereof, I have hereunto set my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord,

Or to stand  
special bail.

\_\_\_\_\_." And any sheriff or other officer, failing to make such assignment, shall be deemed and held as special bail, in the same manner as if no bail had been taken.

*Ib. Sec. 4.*  
Proceedings  
on return of

§ 12. Where any sheriff shall return that he hath taken the body of the defendant, and committed him to the prison of the county in

1 A bail-bond, conditioned for the defendant's appearance at a day different from that prescribed by law for holding the court, is void: *Allen v. White*, *Min. Rep.* 289.

2 Sheriff, failing to take bail, is not liable as special bail, unless duly notified of exception taken. *Neal v. Gaines*, 1 *Stewt. Rep.* 158.



which the arrest was made, (which is hereby declared to be the proper prison for confinement,) the plaintiff may enter the defendant's appearance; and he shall be at liberty to plead, as if such appearance had been entered by himself; and the plaintiff may proceed to judgment as in other cases. *Nevertheless*, the defendant shall not be discharged out of custody, but by putting in bail, or by rule of court, or special order of one of the judges.

§ 13. The bail shall have liberty, at any time before final judgment obtained against him, to surrender to the court, from which the process issued, or to the sheriff returning such process, during the sitting of such court, or to the sheriff in the recess of such court, the principal, in discharge of himself; and such bail shall, at any time before such judgment, have full power and authority to arrest the body of his principal, and secure him, until he shall have an opportunity to surrender him to the sheriff, who made the arrest, or his successor in office, or to the court to which the process was returnable. And such sheriff is hereby required to receive such surrender, and hold the body of the defendant in custody, as if bail had never been given.<sup>1</sup>

§ 14. It shall be lawful for the defendant, in any action where special bail is required, to go before any judge, or a justice of the peace for the county wherein the suit was originated, and enter into a recognizance of special bail, in the following form, to wit: "Be it known, that on the                      day of                      in the year of our Lord,                      , came A. B. before me C. D., a justice of the peace in and for the county of E., and undertook, in behalf of F. G., to be his special bail in an action of                      now depending in the court of the said county of E. wherein H. I. is plaintiff, and the said F. G. defendant. And, in case the said F. G. should be cast in the action, he shall pay and satisfy the condemnation of the court, or surrender his body in custody; or that the said A. B. will do it for him. Given under my hand and seal the day and year above written. C. D." Which recognizance of special bail shall be filed in the clerk's office, among the papers in the suit, to which it has reference. But the plaintiff may object to the sufficiency of the bail at the succeeding court, of which objection the defendant shall have ten days' notice, previous to the day on which such objection is intended to be made: *Provided*, the recognizance of bail be filed fifteen days before the court, at which such objection should be made. And if the court shall be of opinion, that the bail is not sufficient, the suit shall remain in the same situation as if no such recognizance had been filed.

§ 15. All bail, taken according to the directions of this act, shall be deemed, held, and taken, as special bail, and as such, be liable to the recovery of the plaintiff. But the plaintiff shall not proceed against such bail, until execution hath been returned, that the defendant is not to be found in his proper county, when the plaintiff may proceed against such bail, as is usual to proceed against special bail in other cases. And the bail shall have liberty at any time before the return of the first *scire facias* against them, returned "*scire feci*," or of the second returned "*nihil*," to render the principal in discharge of his bail, on payment of costs, however, in either case of such *scire facias*. And such render, if made in term time, shall be

<sup>1</sup> The surrender may be made any time before final judgment obtained against the bail on a *scire facias*.—See § 20.



If render made before final judgment, new recognizance may be taken.

to the court from whence the process issued, and if in the recess of such court, to the officer who made the arrest; which officer is hereby required to receive such render, and execute to the bail a certificate thereof; and hold the body of the defendant in custody, as if no bail had been taken. And such render and commitment, duly certified to the clerk in vacation, or entry of render in open court in term time, and in either case, notice thereof given to the plaintiff, or his attorney, shall discharge the bail. And the bail shall have full power and authority to arrest the body of the principal, and secure him to enable them to render him as aforesaid: *Provided, however*, that, if such render be made before final judgment against the principal, the court or sheriff, to whomsoever such surrender shall be made, is hereby authorized to take the defendant's recognizance of special bail, with such other sufficient bail as he may offer; and if taken by the sheriff, he shall file the same in the court where the suit is depending, on the first day of the next term; and the bail therein shall be liable to exception, in the same manner as bail in the original bail-bond. And the bail shall have the same privileges, and be subjected to a recovery in the same manner.

*Ib. Sec. 8.*  
Proceedings against bail on *scire facias*, &c.

§ 16. When any *scire facias* shall, by the proper officer, be returned to have been made known to the bail; and they, in consequence thereof shall appear, they shall be obliged to plead, and the issue shall be tried the same term to which the process shall be returned, unless sufficient cause be shown to the court to the contrary; but the bail shall not be admitted to plead *non est factum*, unless they first file an affidavit of the truth of their plea: *Provided, nevertheless*, that if any sheriff shall return on any *scire facias* to him directed, that the principal is imprisoned by virtue of any process, civil or criminal, the court, to which such *scire facias* is returnable, shall, on motion of the plaintiff or bail, order and direct, that such principal be retained where he shall be a prisoner, until the plaintiff's judgment and cost be satisfied, or he or she be otherwise discharged by due course of law: a copy of which order being served on the keeper of such prison, before such prisoner's release, shall be sufficient authority for him to retain such prisoner, until such order be complied with, and shall be deemed a surrender of the principal, and a discharge of the bail.

If sheriff return, that principal is imprisoned on other process, court may, on motion, order him to be retained.

1811—(1)  
Sec. 5.  
Bail may obtain judgment by motion against person for whose appearance they were bound for amount paid.

§ 17. In all cases where judgment shall be entered up, in any of the courts of record in this state, against any person, as bail for the appearance of another, to defend any suit depending in such court, and the amount of such judgment, or any part thereof, hath been paid or discharged, by such bail, his, her, or their heirs, executors, or administrators, it shall be lawful for such bail, his, her, or their executors or administrators, to obtain judgment by motion against the person or persons, for whose appearance they were bound, his, her or their heirs, executors or administrators, for the full amount of what shall have been paid by the said bail, his or her heirs, executors, or administrators, in any court where judgment may have been entered up against such bail: *Provided, always*, That no judgment shall be obtained by motion aforesaid, unless the party or parties, against whom the same is prayed, shall have ten days' previous notice thereof.

Ten days' notice to be given.

1821—(36)  
Sec. 4.

§ 18. In all cases where judgment shall be entered up in any of the courts of record, or by any justice of the peace, against any person,



as common bail for the appearance of another, to defend any suit depending in such court, and the amount of such judgment, or any part thereof hath been paid or discharged by such common bail, his, her, or their heirs, executors, or administrators, it shall be lawful for such common bail, his, her, or their heirs, executors, or administrators, to obtain judgment by motion, against the person or persons for whose appearance they were bound, his, her, or their heirs, executors, or administrators, for the full amount of what shall have been paid, by the said common bail, his, her, or their heirs, executors, or administrators, in any court, or before any justice of the peace, where judgment may have been entered up against such common bail: *Provided, always,* That no judgment shall be obtained on motion as aforesaid, unless the party or parties, against whom the same is prayed, shall have at least ten days' previous notice thereof; *And provided, also,* That in all cases, no judgment shall be entered up, on motion as aforesaid, when the amount exceeds fifty dollars, unless by a lawful jury it shall be so awarded.

Common bail may have judgment by motion.

Ten days' notice to be given. If over 50 dollars, jury required.

1812—(16.) Sec. 2. Bail may defend suit.

§ 19. In all actions where bail is required, and where any original process in such cases is returned, "executed," if the defendant shall fail to appear according to the commands thereof, the bail in such action may defend the suit, and shall be subject to the same judgment and recovery, as the defendant might or would have been subject to; and in actions of detinue, the bail shall be subject to the restitution of the thing sued for, or the alternate value, according to the judgment of the court; and the bail-piece shall be so altered, in such cases, as to authorize the bail, in addition to the privileges already allowed him by law, to restore the thing sued for; and if the sheriff in such cases shall not take or return bail as required of him, or the bail returned shall be judged to be insufficient by the court, and the defendant shall fail to appear and give bail in such case, the sheriff, in addition to the privileges already allowed him by law, shall have the like liberty of defending such action, and shall be subject to the same recovery as is provided above for the bail; and if the sheriff depart this life before judgment be confirmed against him, in such case the judgment shall be confirmed against his executors or administrators; or in case there be no executors or administrators, or no certificate of probate, or administration granted, then judgment may be confirmed against his estate, and a writ of *feri facias* may in either case be issued in the name of such deceased sheriff, as if he were living, and be levied on his estate.

Judgment in detinue.

Sheriff, when special bail by delinquency, may defend suit. Proceedings in case of sheriff's death.

§ 20. The true intent and meaning of the fifth and seventh sections of an act entitled "An Act concerning bail in civil cases," as to the privilege of the bail in surrendering his or their principal, is, and shall be construed to be, that the bail shall have liberty at any time before final judgment obtained against him on a *scire facias*, to surrender to the court from which such process issued, or to the sheriff returning such process during the sitting of such court, or to the sheriff, in the recess of such court, the principal, in discharge of himself; and the bail in any action, shall have a right to plead in bar to any *scire facias* against him, her, or them, the death of the principal at any time previous thereto: and if on the trial of any such issue, it shall be found that the principal is not living, judgment shall be given in favor of the defendant to such *scire facias*.

1b. Sec. 3. Explanation of former act on the privilege of bail to surrender principal. a See § 13 and 15.

Bail may plead death of principal in bar to *sci. fa.*

§ 21. All bail-bonds, and delivery bonds, taken by constables, shall be taken payable to the plaintiff in the action, and returned with the other papers in the suit, and proceeded on for forfeiture, as now provided by law.

1829—(2) Sec. 5. Bail and delivery bonds, taken by constables to be payable to plaintiff.



## BANKS

1821—(27)  
Notes of specie-paying banks only, receivable in payment of taxes or fines.

Notes, how presented.

Payment refused.

Court may render judgment against bank on motion.

Proviso. Notice of motion, how served.

What holder of note must prove.

Bank may defend.

Motion to be tried first term.

When governor may direct solicitor or to proceed on *quo warranto*.

Court may make order concerning effects, &c. of delinquent bank.

Additional counsel.

§ 1. No bill or note, of any bank whatsoever, shall be receivable at the treasury of this state in payment of taxes, nor be receivable in payment of fines and forfeitures, which may accrue to the state or to the counties respectively, unless, at the time of making such payments, the bank, whose bills or notes are so offered in payment, is in the regular course of redeeming its notes and bills with specie, according to their nominal value.

§ 2. The bearer of any bill or note, issued by any incorporated bank within this state, may, at any time, present such bill or note at such bank for payment; and in case of failure or refusal to make payment, according to the tenor and effect of said bill or note, it shall be lawful for such bearer, by himself, his agent, or attorney, to move the circuit or county court, of the county where such bank is situated, for judgment against said bank; whereupon the said court shall, without delay, render judgment and award execution for the amount expressed in said bill or bills, note or notes, with legal interest from the time of the demand of payment, and until finally paid, or the amount of such judgment be made, by due course of law, and costs of suit: *Provided*, That notice of such intended motion be served on the president, or cashier, or person acting as cashier of said bank, ten days previous to the hearing of such motion, which notice shall be served by the sheriff of the county, who shall make a regular return of the same; *And provided*, That the plaintiff prove such presentment of the bill or note, and the failure or refusal of payment, or in lieu of such testimony, produce the protest of a notary public showing these facts; *And provided, also*, That if the said bank may wish to make defence, and contest the plaintiff's motion, the court shall, instantly, empanel a jury to try the issue, and therein give judgment accordingly. All motions under this act, shall be tried the first term, having preference of all other causes.

§ 3. If any incorporated bank within this state, shall not make regular specie payments for any of the bills or notes it may have issued, the governor of the state shall give information of the fact to the solicitor of the circuit in which the bank may be situated, directing him forthwith to proceed against the said bank on a writ of *quo warranto*, requiring it to show cause why its corporate powers, privileges, and immunities, should not be adjudged to be forfeited, and the said bank dissolved. And the court, determining the case, shall have power to adjudge and decree concerning the same, according to law and usage, and to declare the charter of such bank forfeited; and also to make such orders consequent thereupon, in relation to the estate and effects, rights and credits of such bank, as shall secure the rights of all concerned. And the governor shall associate with the solicitor such other counsel as he may deem proper.



## BANK OF THE STATE OF ALABAMA.

One state bank may be established, with such number of branches as the general assembly may, from time to time, deem expedient: (1) *Provided*, That no branch bank shall be established, nor bank charter renewed, under the authority of this state, without the concurrence of two-thirds of both houses of the general assembly; *And provided, also*, that not more than one bank nor branch bank shall be established, nor bank charter renewed, at any one session of the general assembly, nor shall any bank or branch bank be established, or bank charter renewed, but in conformity with the following rules:

1. At least two-fifths of the capital stock shall be reserved for the state.
2. A proportion of power in the direction of the bank shall be reserved to the state, equal at least to its proportion of stock therein.
3. The state, and the individual stockholders, shall be liable, respectively, for the debts of the bank, in proportion to their stock holden therein.
4. The remedy for collecting debts shall be reciprocal, for and against the bank.
5. No bank shall commence operations, until half of the capital stock subscribed for be actually paid in gold or silver, which amount shall, in no case, be less than one hundred thousand dollars.
6. In case any bank or branch bank shall neglect or refuse to pay, on demand, any bill, note, or obligation, issued by the corporation, according to the promise therein expressed, the holder of any such note, bill, or obligation, shall be entitled to receive and recover interest thereon, until the same shall be paid, or specie payments are resumed by said bank, at the rate of twelve per cent. per annum, from the date of such demand, unless the general assembly shall sanction such suspension of specie payments, and the general assembly shall have power, after such neglect or refusal, to adopt such measures as they may deem proper, to protect and secure the rights of all concerned, and to declare the charter of such bank forfeited.
7. After the establishment of a general state bank, the banks of this state, now existing, may be admitted as branches thereof, upon such terms as the legislature and the said banks may agree, subject, nevertheless, to the preceding rules.

Whereas, it is deemed highly important to provide for the safe and profitable investment of such public funds, as may now, or hereafter, be in the possession of the state, and to secure to the community, the benefits, as far as may be, of an extended and undepreciated currency:

§ 1. *Be it therefore enacted, &c.* That a bank shall be, and is hereby established, in the name, and for the benefit of the state, to be known under the name and style of the "Bank of the State of Alabama," and the faith and credit of the state are hereby pledged for

Con. Ala  
Art. 6.  
Establish-  
ment of  
banks.

Rules for the  
establish-  
ment of  
banks and  
branches.

1822—(17)  
Preamble.

Bank estab-  
lished.  
Faith and  
credit of the  
state pledged

(1) Since the adoption of the constitution in this state, the right to exercise banking powers is a franchise: *The State v. Stebbins et al.*, 1 *Stewt. Rep.* 299.



for its support.

the support of the said bank, and to supply any deficiency in the funds hereinafter specifically pledged, and to give indemnity for all losses arising from such deficiency.

University moneys to constitute part of the capital. Governor, president and directors to issue stock to trustees of university.

§ 2. The moneys arising, or which may have arisen, from the sale or rent of the lands given to this state by the congress of the United States, for the support of a seminary of learning, shall form, compose, and constitute, a part of the capital of said bank; and the governor, for the time being, together with the president and directors of the said bank, or a majority of them, shall be authorized and required, for and in behalf of the state, and with a pledge of the public faith and credit, to issue to the trustees of the university of Alabama, state stock, or certificates of debt, bearing an interest of six per cent. per annum, payable half yearly to the said trustees, or kept subject to their order, according to the laws of the state, to the amount of such sum or sums, as may be, from time to time, paid over by the said trustees to the president and directors of the said bank; the said interest to be forever applied to the use of said seminary: *Provided*, That the amount vested as aforesaid, as part of the capital of said bank, shall not exceed one hundred thousand dollars.

Amount invested not to exceed 100,000 dol.

Three per cent. fund to form part of capital.

§ 3. All the moneys, which may arise from the three per cent. granted to this state, by the congress of the United States, on the net proceeds of lands which have been, or shall be sold by the United States, within this state, from and after the first day of September, 1819, shall constitute a part of the capital of said bank, and shall be so vested, as the same may be received by this state; and the net proceeds, or banking dividends of said capital, shall be applied to the making of roads and canals, and improving the navigation of the rivers within this state, or be vested so as to augment the capital, until such application shall be directed by law.

Seat of government fund to form part of capital.

§ 4. All the moneys, which may arise, or have arisen, from the grant of the United States to this state, of sixteen hundred and twenty acres, for the seat of government thereof, shall form a part of the capital of said bank; and the net proceeds or banking dividends of said capital, be applied to objects connected with the seat of government, or be vested, so as to augment said capital, until such application may be directed by law.

Proceeds of lease of salt springs.

§ 5. All the moneys, which may arise from the lease of the salt springs granted to this state by the United States, shall form a part of the capital of said bank, and the proceeds shall be vested so as to continually increase the capital, until otherwise provided for by law.

Proceeds of escheats.

§ 6. All the moneys, which may arise from escheats in this state, shall form a part of the capital of said bank, and shall be so vested, whenever sums amounting to one hundred dollars shall have accumulated in the treasury; but no investment shall be required to be made of a less sum than one hundred dollars, and the proceeds of the same shall be continually vested, so as to augment the capital, until otherwise directed by law.

All other public funds may be invested.

§ 7. All other public funds, which the state may hereafter become possessed of, shall form a part of the capital of said bank, should the investment thereof be authorized by law.

Governor and commissioners authorized to issue state stock. Amount, interest, and

§ 8. The governor, and five commissioners, to be appointed by a joint vote of both houses of the general assembly, shall be authorized to issue state stock, redeemable after a term of years, not exceeding ten years, or at the pleasure of the state, to an amount not exceeding one hundred thousand dollars, bearing an interest not exceeding six



per cent. per annum, payable half yearly, at the treasury of this state, <sup>when re-  
deemable.</sup> or at such place as the governor, and the said commissioners, may contract for in the issue of the said stock: the said stock, when so issued, to be in aid of the capital of the said bank; and all the mo- <sup>Public funds  
and credit of  
the state  
pledged for  
its redemp-  
tion.</sup> neys which may at any time be in the treasury, are hereby pledged for the regular payment of said interest, in time and manner as aforesaid, and the public funds of the state, of every nature and kind whatsoever, (the university fund, and three per cent. fund excepted,) are hereby pledged to secure the principal of said stock, and also, the good faith and credit of the state, in any case of deficiency of the said public funds.

§ 9. The following powers, rules, conditions, limitations, and restrictions, shall be fundamental laws of the said bank, viz:

1st. The president and directors, for the time being, shall have <sup>Power of  
president  
and direct-  
ors.</sup> power to elect and remove the cashier; and they shall also have power to appoint such officers, clerks, and servants under them, as shall be necessary for executing the business of the said corporation.

2d. They shall receive money on deposit, and pay away the same <sup>Shall receive  
money on de-  
posit.</sup> to order, free of expense; deal in bills of exchange, and discount <sup>May deal in  
bills and  
notes.</sup> notes made payable and negotiable at said bank, with two or more good names thereon, or secured by a deposit of bank or other public stock, at not more than two-thirds of its value, at a rate of interest not exceeding six per cent. per annum. No individual, partnership, or body corporate, (the trustees of the university of Alabama in their official capacity excepted,) shall be indebted, either directly or indirectly, by discount as aforesaid, to the bank, in a greater amount than <sup>Discounts  
not to ex-  
ceed 2,000  
dollars.</sup> two thousand dollars.

3d. The total amount of the debts, which said corporation shall at any time owe, whether by bond, note, bill, or contract, shall not ex- <sup>Debts not to  
exceed twice  
the amount  
of capital.</sup> ceed twice the amount of its capital, over and above the moneys then actually deposited in bank for safe-keeping, unless the contracting of any greater debt shall have been previously authorized by a law of this state.

4th. In case of excess, the directors under whose administration it shall happen, shall be liable for the same in their private capacities, and an action of debt may, in such case, be brought against them, <sup>Directors to  
be individu-  
ally liable for  
debts illegal-  
ly contract-  
ed.</sup> or any of them, their or any of their heirs, executors or administrators, in any court of this state having jurisdiction, by any creditor or creditors of the said corporation, and may be prosecuted to judgment and execution, any condition, covenant, and agreement, to the contrary notwithstanding. But this shall not be construed to exempt said bank, or the lands, tenements, goods, or chattels of the same; and on their insufficiency, the state of Alabama, from being also liable for, and being chargeable with, the said excess. Such of the said directors as may have been absent when said excess was contracted or created, or may have dissented from the resolution or act, by which the same was contracted or created, may respectively exonerate themselves from being individually liable, by entering, if present, their dissent on the books of the bank, at the time the debt may be so contracted, and forthwith giving notice of the same to the controller of the state. <sup>Directors, ab-  
sent or dis-  
senting, to be  
exonerated.</sup>

5th. Immediately after the passing of this act, the legislature shall <sup>President  
and directors  
to be elected</sup> proceed to elect, by joint vote, a president and twelve directors to

<sup>1</sup>The number of directors is now reduced to six. See post. § 60.



- by general assembly. manage and conduct the business of the said bank, whose offices shall continue for one year, and until their successors shall be duly qualified, and all future elections of the president and directors shall be by joint vote of the general assembly.
- Directors fill vacancy in their board, 6th. In case of vacancy, occasioned by the death, resignation, or removal out of the state, of any director, a majority of the directors shall fill such vacancy, and the director, so appointed, shall hold his office during the unexpired term of service of the director so dying, resigning, or removing out of the state.
- or in the office of president. 7th. In case of the death, resignation, or removal out of the state, of the president, (unless such removal be temporary, and by permission of the board of directors,) the directors shall appoint one of their own body a president, who shall serve until the next session of the legislature, when such vacancy shall be filled by joint vote of both houses of the general assembly.
- Certain persons disqualified from being officers of the bank. 8th. No person who is not a citizen of this state, or who is a director of any other bank, or co-partner of any such director, shall be eligible as president or director of this bank: nor shall any person who is a member of the general assembly of this state, be eligible to any office in said bank, or any branch thereof, during the time for which he is elected.
- Not less than five directors to constitute a board. 9th. Not less than five<sup>1</sup> directors shall constitute a board for the transaction of business, of whom the president shall always be one, except in case of sickness or necessary absence, in which case his place may be supplied by any other director, whom he, by writing under his hand, shall nominate for the purpose, and in default of such nomination, by the president, or in case of the sickness or necessary absence of the person so appointed, in either event, the board of directors may appoint a temporary president.
- Books to be kept and proceedings entered. 10th. The directors shall keep fair and regular entries of their proceedings, in a well bound book, to be provided for that purpose; and on any question, where two directors shall require it, the *yeas* and *nays* of the directors shall be duly inserted on the minutes, and those minutes shall be at all times, on demand, produced to the legislature, or any committee thereof, who may be legally authorized to require the same; and on all such questions, every member present shall be required to vote.
- President, cashier, teller, and clerk to give security. 11th. Every president and cashier, before he enters on the execution of his duty, shall give bond with two or more securities, to the satisfaction of the directors, in a sum not less than fifty thousand dollars, conditioned for his good behaviour; and the tellers and clerk shall give security in a sum not less than ten thousand, nor more than twenty thousand dollars.
- All officers, &c. to take oath. 12th. The president, directors, cashier, and all other officers and servants, shall take the following oath, on entering on the duties of their respective offices:—"I, A. B. do solemnly swear that I will faithfully discharge the trust reposed in me as \_\_\_\_\_ of the Bank of the State of Alabama: So help me God."<sup>2</sup>
- Bank incorporated. Style of the corporation. 13th. This bank is hereby incorporated, and made a corporation and body politic, by the name and style of "*The President and Directors of the Bank of the State of Alabama*," and so shall continue

<sup>1</sup>Three directors and the president now sufficient. See "Bank of the State and Branches—General Provisions," § 25.

<sup>2</sup>For other oaths to be taken by bank officers, see "Bank of the State and Branches—General Provisions," § 9, 23.



until the first day of January, one thousand eight hundred and forty-five; and by that name shall be, and is hereby made, able and capable in law to sue, and be sued, plead, and be impleaded, answer, and be answered, defend, and be defended, in courts of record, or any other place whatsoever; and also to make, have, and use a common seal, and the same to break, alter and renew, at their pleasure; and also to ordain, establish, and put in execution, such by-laws, ordinances, and regulations, as shall seem necessary and convenient for the government of the said corporation, not being contrary to the laws, or to the constitution of this state, and generally to do and execute all and singular, such acts, matters, and things, which to them it shall or may appertain to do: subject, nevertheless, to the rules, regulations, restrictions, limitations, and provisions, prescribed in this act.

14th. The president and directors shall have power to issue notes, signed by the president, and countersigned by the cashier, not under the denomination of one dollar, on the behalf of said corporation, for such sums, and with such devices, as they may deem most expedient and safe.

15th. They shall also be capable of exercising such other powers and authorities, as may be necessary for the well-governing and ordering the affairs of the said corporation, and of promoting its interests and its credit.

§ 10. The bills obligatory, and of credit, under the seal of said corporation, which shall be made to any person or persons, shall be assignable by endorsement thereupon, under the hand or hands of such person or persons, and of his, her, or their assignee or assignees, and so as absolutely to transfer and vest the property thereof, in each and every assignee or assignees, successively; and to enable such assignee or assignees, to bring and maintain an action thereupon, in his, her, or their own name, or names.

And bills or notes, which may be issued by order of the said corporation, signed by the president and countersigned by the cashier thereof, promising the payment of money to any person or persons, his, her, or their order, or to bearer, though not under seal of the said corporation, shall be binding and obligatory upon the same in like manner, and with the like force and effect, as upon any private person or persons, if issued by him, her, or them, in his, her, or their private or natural capacity or capacities, and shall be assignable and negotiable in like manner as if they were so issued by such private person or persons; that is to say, those which are or shall be payable to any person or persons, his, her or their order, shall be assignable by endorsement, in like manner, and with the like effect as foreign bills of exchange now are; and those which are or shall be payable to bearer, shall be negotiable, and assignable by delivery only: *Provided*, That all bills or notes issued by said bank, shall be payable on demand in specie, at the principal bank.

§ 11. No director, officer, clerk, or servant of the said corporation, shall be concerned, either directly or indirectly, in the practice of advancing or loaning out moneys, at an illegal rate of interest, whether the same be done or effected under the form and color of a purchase or exchange of notes, acceptances, due-bills, checks on banks, acknowledgments, or in any other way or manner whatsoever; and every such director, officer, clerk, or servant of this bank, who shall be concerned as aforesaid, in any such practices, shall, in addition to the usual penalties imposed by law, forfeit and pay for each offence, the sum of two thousand dollars, to be recovered by action of debt in any court of record in this state, one-half to the use of the informer,

Powers.

Empowered to issue notes.

General grant of powers.

Bills under seal assignable by endorsement.

Other notes and bills assignable as the notes and bills of private persons.

No director, &amp;c. to loan out money at an illegal rate of interest.

Penalty.



How recovered and levied.

and the other half to the use of the state ; and to be levied of the goods and chattels, and houses, lands, tenements, and other hereditaments and real estates of the person or persons so offending, if any he or they shall have.

Unable to discharge penalty, to be imprisoned six months at least.

And on failure of any property to answer the said penalty, by a return of *nulla bona*, the person or persons, so offending, shall and may be taken, on execution upon a *capias ad satisfaciendum*, and being so taken, shall not be entitled to the benefit of any act made for the relief of insolvent debtors, until he or they shall have remained, and been confined in prison for the term of six months at least. And any such person being convicted, by the verdict of a jury, of any of the practices aforesaid, whether he be a director, or officer, or servant of this bank, shall on motion of any director, be dismissed from the service of said bank.

General assembly to be furnished with statements of the bank's transactions and situation.

§ 12. It shall be the duty of the president and directors to furnish to the general assembly within the first week of every session, statements of the amount of capital stock of said corporation, and of the debts due to the same ; of the moneys deposited therein ; of the notes in circulation, and of the cash on hand, together with all other property of said bank, both real and personal. And the general assembly shall have a right to inspect such general accounts in the books of the bank, as shall relate to the said statement ; and shall, whenever it may be deemed necessary, appoint a joint committee of both houses of the general assembly for that purpose, with full powers to send for persons and papers. And it shall, also, be the duty of the comptroller, to inspect such general account in the books of the bank, as often as he may please ; and it shall, and it is hereby declared to be his duty, faithfully to report all and every violation of the fundamental rules of this corporation to the legislature : *Provided, however,* That nothing in this clause shall imply a right of inspecting the account of any private individual or individuals, or any body politic or corporate, with the bank.

Comptroller to inspect books, and report to the legislature.

Notes receivable for all public dues.

§ 13. The bills or notes of the said corporation, originally made payable, or which shall have become payable on demand, in gold or silver coin, shall be receivable at the treasury of this state, and by all tax-collectors and other public officers, in all payments for taxes or other moneys due to the state.

Comptroller to make certain transfers.

§ 14. The comptroller is hereby authorized and directed to transfer to the bank, on account of capital, all sums, which may be received in the course of the preceding years, on the first day of January, eighteen hundred and twenty-five, and remaining in the treasury on the first day of March in each and every year.

Board may suspend or expel a director.

§ 15. A majority of the members present, at any regular meeting of the directors of the Bank of the State of Alabama, may suspend any director with a view to his expulsion ; and any member may be expelled, at a meeting of a board of directors specially convened by the president for that purpose, as soon after such suspension takes place, as may be practicable ; but such expulsion shall not be made, by a majority of less than two-thirds of the whole number of directors.

Comptroller to be furnished with statement of the condition of the bank.

§ 16. The comptroller shall be furnished, as often as he may require, not exceeding once a month, with statements of the amount of the capital stock of the bank, and of the debts due to the same ; of the moneys deposited therein ; of the notes in circulation ; and of the cash on hand ; and he shall, under the injunction of secrecy, have the right to inspect all the accounts and books of the bank : *Provided,* That this act shall not be construed to imply a right of



inspecting the accounts of any private individual or individuals with the bank. And it shall be the duty of the said comptroller to make an annual report to the legislature on the subject of the bank; and if, in his opinion, the transactions of the bank, or any particular circumstance relating thereto, shall require it, he shall apply to the house for a select committee of three members to be appointed, who shall, under a like injunction of secrecy, take into consideration any matters relating to the said bank, submitted to them by the comptroller, and report thereon, at their discretion, to the legislature.

To make annual report to the legislature.

§ 17. The comptroller, for the time being, shall not be a director, nor hold any office of trust or profit in or under any bank whatever.

Comptroller not to hold any office.

§ 18. If any person or persons shall be indebted to said corporation, as maker or endorser of any note, bill, or bond, expressly made negotiable and payable at said bank, and shall delay payment thereof, it shall be lawful for the president of the bank, after having given thirty days' notice thereof, to move the circuit or the county court of the county where said bank may be established, on producing to said court, before whom the motion is made, the certificate of the president of the bank, that the debt is really and *bona fide* the property of the said bank, for judgment:—and all debts due by the said bank, by bond, bill, note, or otherwise, to any individual or body corporate, may be sued for and recovered in like manner.

Mode of collecting for and against the bank.

§ 19. If any president, director, cashier, or other officer of the state bank or any of its branches, shall embezzle<sup>1</sup> or fraudulently convert to his or their own use, any sum of money, bank note, bill of exchange, check, bond, or other security placed under his care or management, by virtue of his office or place aforesaid, the person so offending, his aiders, abettors, and counsellors, upon conviction thereof, shall be judged guilty of felony, and be sentenced to imprisonment, in the public jail of the county in which the offence has been committed, for a term not less than twelve months, and there remain until he or they shall make good all damages, which the bank may have sustained by his or their misconduct, and be fined, at the discretion of the jury trying the said offence; and shall, forever thereafter, be disqualified from holding any office of profit or trust in this state, and shall, moreover, be liable for the sum so embezzled.

Embezzlement by officers of the bank, how punished.

§ 20. The said bank shall not deal in articles of goods, wares, or merchandise, in any manner whatever, unless it be to secure a debt due said bank, incurred by the regular transactions of the same, as is provided for in this act.

Ib. Sec. 22. In what the bank shall not deal.

§ 21. The principal bank, established by this act, shall be located by joint vote of both houses of the general assembly; and it shall require a majority of the whole number of votes given to make such location.

Ib. Sec. 23. Bank to be located.

§ 22. It shall not be lawful for the president, directors, cashier, or other officers of said bank, to become endorsers at said bank for each other, or any other person or persons.

Ib. Sec. 24. Bank officers not to endorse.

§ 23. The powers granted to the governor, and five commissioners, by the eighth section of the above recited act,<sup>a</sup> are hereby authorized and directed to be performed by a majority of them; and the governor and three of the above named commissioners shall constitute a quorum, to transact any business contemplated by said act.

Ib. Sec. 24. Bank officers not to endorse. 1823—(22) Sec. 1. Supplemental. a Preceding act. See § 8. Governor, and three commissioners a quorum.

§ 24. The president and directors of the Bank of the State of Alabama, when they find it expedient to issue notes not under the seal

<sup>1</sup> See "Penal Code," chap. 4, § 33.



1824—(22)  
Sec. 1.  
Post notes  
may issue,  
payable af-  
ter a period  
of not more  
than 120  
days.

of the corporation, and promising the payment of money to any person or persons, his, her, or their order, assignable by endorsement, as provided in the tenth section of the act to establish the Bank of the State of Alabama, commonly called *post notes*, may issue the said notes payable after a period not exceeding one hundred and twenty days, and the said notes shall be payable in specie on demand, when the period for which they shall have issued may have expired; any requisition or construction of the said tenth section to the contrary notwithstanding.

*Ib. Sec. 2.*  
Powers of at-  
torney may  
be acknow-  
ledged be-  
fore clerks of  
court, and  
notaries.

§ 25. The clerks of the several circuit and county courts, and public notaries, are hereby authorized and required, upon the application of any person or persons, to take acknowledgments of powers of attorney, to transact business with the said bank, and certify the same under their seals of office; and if there be no seal of office, under their private seal, as their official seal.

*Ib. Sec. 4.*  
State treasur-  
er to pay  
the revenue,  
&c. into  
bank.

§ 26. The treasurer is hereby required, to pay over to the said bank, the revenue and public dues audited in the comptroller's office, and the same shall remain subject, in said bank, to the checks of the said treasurer, for the payment of all demands made payable at the treasury of this state.

*Ib. Sec. 5.*  
Vacancies  
occurring  
while legis-  
lature is in  
session.

§ 27. All vacancies, that may happen in the board of directors, during the session of the general assembly, shall be filled by joint vote, as in other cases.

1824—(23)  
Sec. 1.  
President  
and directors  
to provide  
for payment  
of interest on  
loan to this  
state.

§ 28. The president and directors of the Bank of the State of Alabama are required to take early and effectual measures, to provide for the payment of the half-yearly interest, which will first become due, on the loan obtained for the use of the state: the said payment to be made at the Phoenix Bank, in the city of New York, and also to provide, from time to time, for every future payment of interest on the said loan.

*Ib. Sec. 3.*  
And to make  
semi-annual  
reservations  
hereafter.

§ 29. It shall be the duty of the said president and directors, to reserve, continually, from the net proceeds of their banking business, full and sufficient sums to meet the said half-yearly payments of interest, as they severally become due, and transmit the same to the Phoenix Bank, in the city of New-York.

1826—(3)  
Sec. 1.  
Joint com-  
mittee to be  
elected by  
the general  
assembly.

§ 30. It shall be the duty of the senate and house of representatives, at every session, each and separately, to elect a joint committee, consisting of three members from each house, who shall, under the injunction of secrecy, be invested with full powers to make a thorough examination of all the books and papers, of what nature or kind soever they may be, belonging to the said bank; of the specie and notes on hand; of the notes discounted; the applications for discount; and the said committee shall, in addition, be further invested with all the powers, which the twelfth section of "An Act to establish the Bank of the State of Alabama"<sup>a</sup> may now confer on the joint committee of both houses of the general assembly.

<sup>a</sup> The first  
act under  
this title.  
See § 12.  
*Ib. Sec. 2.*  
Duty of  
committee.

§ 31. It shall be the duty of the said committee, to report to the general assembly the amount of specie and notes on hand; the amount of notes discounted, and each and every case, (if any there be,) of a violation of the charter, of mismanagement of the concerns of said bank, or of fraud or imposition practiced by borrowers or others, on the directors or officers of the institution;<sup>b</sup> for which purposes, or for any other object connected with the interest and well-being of the institution, said committee may, at their discretion, send for persons and papers, and compel the attendance of witnesses: *Provided, how-  
ever,* That nothing herein contained, shall imply the right of said com-

[b 1828—(15)  
Sec. 4.]  
May send for  
persons and  
papers.  
Proviso.



mittee to report to the general assembly the situation of any private debtor or creditor of the bank, or the name of any private debtor or creditor, unless their situation or names are palpably connected with some imputed violation of the charter, mismanagement in the concerns of the bank, or of some fraud or imposition practiced on the directors or officers of the institution.

§ 32. The injunction of secrecy, imposed on the committee as aforesaid, shall not be removed, except by a joint resolution of both houses of the general assembly. *Ib. Sec. 3.*  
Injunction of  
secrecy on  
committee.

§ 33. The compensation, to be allowed to the cashier and other officers and servants of the Bank of the State of Alabama, shall be fixed by the general assembly: *Provided*, That no allowance shall be made by the directors to the cashier, clerk, or teller, unless the cashier be required to live in or adjoining the banking-house, in which event rent may be allowed him by the board, according to their discretion. 1827—(8)  
Sec. 2.  
General as-  
sembly to fix  
compensa-  
tion of bank  
officers.

§ 34. All monies which have arisen, or which may arise from the profits of the bank, shall be vested by the president and directors, under the direction of the governor, in bank stock in the said bank, until otherwise directed by law. 1827—(22)  
Sec. 2.  
Profits of the  
bank to be  
vested in  
stock.

§ 35. The directors of the bank of the state, shall be exempted from serving as jurors and performing militia duty. 1827—(18)  
Sec. 1.  
Directors  
exempt  
from certain  
duties.

§ 36. The governor, comptroller, and treasurer of the state, and the president of the Bank of the State of Alabama, are hereby authorized and required to issue certificates of stock of the state of Alabama, to an amount not exceeding one hundred thousand dollars, to bear interest at the rate of six per centum per annum, payable semi-annually at the Bank of the state of Alabama, or at such other place as may be agreed on, redeemable at the expiration of twenty years, or at any time thereafter that the state may choose, and sell said stock for cash, provided the same can be disposed of at par, and the sum so to be realized shall be added to the capital stock of the said Bank of the State of Alabama. 1826—(8)  
Sec. 1.  
Governor,  
comptroller,  
treasurer,  
and president  
of bank to  
issue certi-  
ficates of stock  
not exceed-  
ing 100,000  
dollars in aid  
of the bank's  
capital.

§ 37. To secure the regular and punctual payment of the interest, semi-annually, and the ultimate redemption of said stock, all the revenue of the state, (except the university fund and three per cent. fund) is hereby pledged: and in case of any deficiency, the faith of the state is hereby solemnly pledged to provide such additional means as may be necessary. *Ib. Sec. 2.*  
Funds and  
faith of the  
state pledged  
for its re-  
demption.

§ 38. It shall not be lawful for the president and directors of said bank, or any other person or persons for them, to purchase any real estate, or in any wise be concerned therein, for the use of said bank, unless the same be purchased for the purpose of securing debts *bona fide* due to said bank, any law to the contrary notwithstanding. 1828—(15)  
Sec. 2.  
Bank not to  
purchase  
real estate  
unless to se-  
cure debts...

§ 39. It shall not be lawful for the president and directors of said bank, to purchase or discount any draft or bill of exchange for a larger amount than five thousand dollars; and on every draft or bill of exchange, purchased or discounted by the said bank, there shall be at least two responsible endorers, each of whom shall be considered good for the amount of such draft or bill: *Provided, always*, That no individual shall, at any time, be indebted to the bank as endorser on any draft or bill of exchange, for a larger amount than five thousand dollars. *Ib. Sec. 3.*  
Not to dis-  
count for a  
larger am't  
than 5,000  
dollars.

§ 40. The president and directors of the Bank of the State of Alabama shall have power to employ an additional clerk for said bank, for not exceeding six months each year, and pay him such compensation as a majority of the board may agree upon, not exceeding sixty dollars per month. 1829—(11)  
Sec. 1.  
Additional  
clerk may  
be employed  
for six  
months in a  
year.



1832—(36)  
 Sec. 16.  
 President  
 and direc-  
 tors of the  
 bank of the  
 state to ap-  
 point com-  
 mittee to  
 examine  
 branch  
 banks.

Committee's  
 duty.

*Ib.* Sec. 17.  
 Compensa-  
 tion of com-  
 mittee.

1833—(5)  
 Sec. 2.  
 Members of  
 general as-  
 sembly not  
 to be securi-  
 ty in the  
 bank of the  
 state, or any  
 of its branch-  
 es.

1833—(36)  
 Sec. 1.  
 Governor to  
 appoint com-  
 missioners to  
 examine.  
 Their duty.

*Ib.* Sec. 2.  
 Further spe-  
 cifications of  
 their duties.

*Ib.* Sec. 3.  
 Officers gail-  
 ty of fraud,

§ 41. It shall be the duty of the president and directors of the Bank of the State of Alabama, to appoint, annually, a committee or committees of not less than two of their board, whose duty it shall be to visit the several branches of said bank, annually, in the month of October, and at such other times as they deem proper, and make a thorough and minute investigation of the affairs, transactions, and condition of said branches; and the said committees are hereby invested with all the powers with respect to said branches, which the joint committees of the general assembly, to examine the condition of the state bank, have in reference to it; it shall be the duty of said committees, to make full reports of their several examinations, to the president and directors of the Bank of the State of Alabama, who shall report the same to the general assembly of this state, within the first week of each annual session.

§ 42. Each member of the committees, contemplated by the foregoing section, shall receive four dollars for every thirty miles in travelling to and from said branch banks, and four dollars for every day that they may be engaged in the examination of said branches.

§ 43. No member of the general assembly shall become security for each other, or for any other person, upon any note to be offered at the Bank of the State of Alabama, or any of its branches.<sup>1</sup>

§ 44. It shall be the duty of the governor, to appoint three commissioners for the examination of each of the branches of the Bank of the State of Alabama, whose duty it shall be, within two months immediately preceding the annual meeting of the general assembly, to proceed to the branch bank for which they may be appointed, and there to examine all books, papers, and accounts, in said bank or branches, that said committee may deem proper and material for the better understanding of the condition of said bank, or branches; also, all cash on hand.

§ 45. If, on the examination of said bank or branches, said commissioners shall find, that any officer of said bank has been guilty of fraud or great negligence in his duty as such, they shall report the same to the board of directors of said bank or branch, as the case may be; and, if said commissioners think the case requires it, they may recommend his removal from office; and the board of directors shall take the case under consideration, and in every vote, upon a question of removal from office, the board shall vote by yeas and nays, and shall enter their proceedings on their journals; and the said commissioners shall have power, and it is hereby made their duty, to examine the record of the proceedings of the board of directors of said banks, and if they believe there has been any impropriety of conduct on the part of the directors, either by too great an emission of money, gross partiality, or from any other cause, it shall be their duty to remonstrate in writing with said board of directors, and to transmit a copy of said remonstrance to the legislature at its next session.

§ 46. If, in the opinion of said commissioners, any officer of said bank or branches shall have been guilty of fraud or gross impropriety, and the board of directors of said bank or branch shall not, on appli-

<sup>1</sup> The act of January 14, 1826, which is evidently the one intended to be repealed by the first section of the above act, although recited as passed in 1825, prohibited members of the general assembly from being indebted to the Bank of the State of Alabama, *either directly or indirectly*. An act passed in 1827, provides "that this act (*substantially that of January 14, 1826*) shall not be so construed, as to prevent any member of the general assembly from negotiating any bill of exchange at said bank, either as drawer, acceptor, or endorser."



cation, remove said officer, said commissioners shall, by unanimous &c. liable to vote, have power to suspend such officer from office, until the next be removed. session of the general assembly; at which time the whole of their proceedings shall be reported within the first week of the session.

§ 47. It shall be the duty of the president and directors, and all officers of said bank, or branches, to furnish said commissioners, when examining the bank or branch of which they may be officers, any information; and they shall be, moreover, bound to answer any interrogatory, put to them by said commissioners, which may be material to the subject of their investigation.

§ 48. Said commissioners may select their own time for the examination of the bank or any of its branches, and shall report to the legislature any violation of their respective charters, and shall receive for their services five dollars for each day they may be engaged in such examination, and four dollars for every thirty miles going to and returning from the same to their respective places of residence, to be paid on the certificate of the president of said bank and branches so examined, stating the time served by each commissioner, respectively.

§ 49. Said commissioners shall, each of them, before they enter upon the duties hereinbefore assigned them, take and subscribe an oath, faithfully to perform the duties required of them by law.

NOTE.—For the compensation of bank officers, see “Salaries.”

#### COLLECTION OF BANK DEBTS.

§ 50. If any person or persons shall be indebted or otherwise liable to the Bank of the State of Alabama, by bill, draft, or any other instrument for the payment of money, as drawer, acceptor, or endorser, and shall delay payment thereof, it shall be lawful for the president of the bank, after having given thirty days' notice to the person or persons so indebted, to move the circuit or county court of the county where said bank is established, on producing to said court before whom the motion is made, the certificate of the president of the bank, that the debt is really *bona fide* the property of the said bank, for judgment.

§ 51. The protest of a notary public of an inland bill of exchange, or other protestable security, the property of said bank, setting forth a demand, refusal, non-acceptance, or non-payment, and that notice thereof was given, either personally or otherwise, to the parties entitled thereto, shall be evidence of such facts: *Provided*, That nothing, herein contained, shall be construed to affect the reasonableness or sufficiency of such demand, refusal, non-acceptance or non-payment.

§ 52. Whenever the president and directors of said bank may be desirous to hold to bail any debtor thereof, it shall be lawful for said president and directors, or either of them, to sue out of the circuit or county court of the county, where said bank is located, a writ of *capias ad respondendum* against such debtor, and endorse thereon the cause of action, and that *bail is required*. In compliance with which direction, the sheriff or other officer, executing said writ, shall take a bail-bond, with the condition provided by law, which bail-bond shall be assignable, and sued on, as bail-bonds in other cases. And the said bank, upon the production of said writ and endorsement, and the return of the sheriff or other officer, that the same is executed, together with the certificate of the president that the debt sued on is *bona fide* the property of said bank, shall recover a judgment therefor,



at the return term of said writ : *Provided*, That no person shall be held to bail, unless the president, agent, or attorney of the bank will make affidavit to the amount of the debt due the same, and that bail is not required for the purpose of vexing or harassing the defendant.

*Ib. Sec. 4.*  
Notice to  
principal.

§ 53. A notice, left at the usual place of residence of the principal, in each case, shall be good and sufficient notice, in all cases as to such principal, to entitle said bank to recover judgment against such principal.

1836—(8)  
*Sec. 1.*  
Governor to  
appoint com-  
missioners to  
examine  
state bank.

§ 54. The governor is hereby authorized to appoint three commissioners, annually, to examine the affairs and condition of the Bank of the State of Alabama, at Tuscaloosa, whose duty it shall be, to report the result of said examination to the legislature, within the first week of their session.

*Ib. Sec. 2.*  
Their com-  
pensation.

§ 55. The commissioners, authorized to be appointed by this act, shall receive the same compensation which is now allowed, by law, to commissioners appointed to examine the several branch-banks of this state.

1836—(9)  
*Sec. 1.*  
President of  
state bank to  
receive from  
bank of Mo-  
bile divi-  
dends of  
state stock,  
and pay  
semi-annual  
interest, &c.  
*Ib. Sec. 2.*  
To sign ac-  
quittances  
for the same.

§ 56. It shall be the duty of the president of the Bank of the State of Alabama, and he is hereby authorized to receive, from the Bank of Mobile, such amount of dividends on the stock owned by the state in said bank, as may have been, or may hereafter be declared by the board of directors, and, out of the sums so received, it shall be his duty to pay the semi-annual interest on the state bonds, amounting to six hundred thousand dollars, invested in the stock of said bank.

§ 57. The said president of the state bank is hereby authorized to sign such books or acquittances, as may be necessary for the dividends aforesaid, and it shall be his duty, after paying the said semi-annual interest, to deposit the remainder of said dividends to the credit of the sinking fund in the said Bank of the State of Alabama.

1843—(1)  
*Sec. 1.*  
When the  
bank may  
discount  
promissory  
notes, or deal  
in bills of ex-  
change.

§ 58. During the suspension of specie payments by said bank, it shall not be lawful for the Bank of the State of Alabama to discount any promissory note, except in renewal of an existing debt; or to deal in bills of exchange, except for the purpose of effecting a remittance of funds, for the payment of the principal and interest of the bonds heretofore issued by the state: and in every case, where any such bill of exchange, purchased by the said bank, shall be protested for non-acceptance, or non-payment, the bank may recover thirty per cent. damages thereon, instead of the damages now allowed, by law, in such cases: *Provided*, that the Bank of the State of Alabama, aforesaid, may purchase bills in settlement or renewal of existing debts, but that no note shall be discounted, or bill of exchange purchased, in renewal or settlement of an existing debt, whereby any party to the same shall be discharged, but the same shall be taken as collateral security, merely; *And provided, further*, that no proposition for renewal or settlement shall be operative, without the concurrence of the president and all the directors; *And provided, further*, if any such last mentioned bills shall be returned, under protest, they shall be subject, in regard to damages, to the laws in force before the passage of this act.

Bank allow-  
ed 30 per  
cent. dam-  
ages on a pro-  
tested bill.

May pur-  
chase bills in  
settlement or  
renewal of  
debts.

Provisos.

*Ib. Sec. 2.*  
Salaries of  
officers.

§ 59. The officers of the said bank shall be reduced to a cashier, teller, book-keeper, and one clerk; the salary of the cashier shall be fifteen hundred dollars per annum; the salary of the teller, twelve hundred dollars per annum; the salaries of the other officers, at one thousand dollars per annum: and the clerk or book-keeper, of the said bank, shall, under the directions of the cashier, perform the duties of notary public, in all cases of paper, belonging to the bank, or lodged with it for collection, and shall not be allowed to demand any fee of

Clerk or  
book-keeper  
to perform  
duties of no-  
tary public.



the bank, but shall be entitled to them from the party protested, or depositing the paper.

§ 60. The directors of the said bank shall be elected, by a joint vote of both houses of the general assembly, from seven persons, nominated to the general assembly for the ensuing year, at the present session of the general assembly, by the governor, and, hereafter, at the commencement of each annual session; and the number of directors shall be six persons, who shall receive three dollars per day: *Provided*, no director shall receive more than three hundred dollars in any one year, as compensation for his services, as director of said bank, and in case any vacancy shall occur in the office of president or directors, during the recess of the general assembly, the vacancy shall be filled by the governor, and it shall be the duty of the cashier, to notify the governor of such vacancy, within ten days after the same shall happen.

*Ib. Sec. 3.*  
Directors,  
how elected.

Their number and compensation.

Vacancies,  
how filled.

§ 61. The president and directors shall give bond, in the sum of ten thousand dollars each, payable to the bank; the bond shall be conditioned for the faithful performance of the duties of their office, and to which there shall be two or more sufficient securities; the said bond shall be taken by the judge of the county court of the county in which the bank is situate, and copied into the record of the clerk of the same court, and the copy shall be received in evidence, in place of the original, and it shall be the duty of the county judge, to forward the original to the secretary of state.

*Ib. Sec. 4.*  
President and directors to give bond.

Judge of county court to take it.

§ 62. It shall not be lawful for the said bank to pay out the bills of either of the branches of the Bank of the State of Alabama, aforesaid.

*Ib. Sec. 5.*  
State bank not to pay out bills of its branches.

§ 63. The debtors of the said bank shall have the right to pay all the debts they now owe, or which may hereafter become due to the same, in the bills of the banks, and no process or proceeding of any person, shall be operative, to defeat this right of the debtor.

*Ib. Sec. 6.*  
Debtors may pay in bills of the banks.

§ 64. The several branches of the Bank of the State of Alabama shall make quarterly statements of their condition, to the Bank of the State of Alabama, aforesaid, and the bills of the several branch banks, after their redemption, shall be returned to the bank aforesaid, in the manner provided by the acts for their liquidation and settlement, always keeping a sufficient amount to meet their expenses and current liabilities.

*Ib. Sec. 7.*  
Branch banks to make quarterly reports, and return their redeemed bills to state bank.

§ 65. The specie and specie funds of the several branches, aforesaid, shall be subject to the exclusive control of the Bank of the State of Alabama; and the president of the said bank shall have full power and authority to direct the transfer of the same.

*Ib. Sec. 8.*  
Specie and specie funds of branches, under control of state bank.

§ 66. The president of the state bank, under the direction and control of the governor, shall take the necessary measures for the extension of the state bonds, payable in eighteen hundred and forty-four, (or at any time thereafter, at the pleasure of the state,) and should it become necessary, the governor may direct the issuing of new bonds, corresponding with those heretofore issued by the state, to be substituted for the bonds aforesaid.

*Ib. Sec. 9.*  
State bonds, how extended.

§ 67. The president and directors of the Bank of the State of Alabama shall provide for the payment of the interest on the state bonds, which have been issued on account of either of the branch banks, and any funds, in either of the said branches, shall be applicable to this object, as the president and directors, aforesaid, may appoint.

*Ib. Sec. 10.*  
State bank to provide for payment of interest on state bonds.

§ 68. The president of the Bank of the State of Alabama may direct the transfer, to the bank aforesaid, of any and all foreign bills of exchange, held by either of the branch banks aforesaid, and all specie

*Ib. Sec. 11.*  
Foreign bills of exchange, held by branches,



under control of state bank.

*Ib. Sec. 12.*  
Branch banks to report to state bank in relation to 16th section fund.  
*Ib. Sec. 13.*  
Real estate liable.

funds of every description; and the branch banks aforesaid, shall apply any part under the direction of the president and directors of the Bank of the State of Alabama aforesaid.

§ 69. The several branch banks shall report, semi-annually, to the state bank aforesaid, a full account of all their transactions on account of the sixteenth section fund.

§ 70. The real estate of the said bank is hereby vested in the president and directors of the same, and their successors, for the payment of the debts due by said bank.

### BRANCH AT MONTGOMERY.

1832—(14)  
Branch established.

Style.

Principal bank to supply it with a capital of 300,000 dolls.

Legislature to elect president and directors.

Powers, rules, &c.

Discounts limited.

Vacancy in board of directors.

§ 1. *Be it enacted, &c.* That a Branch of the Bank of the State of Alabama, be, and the same is hereby established, at such place as shall be determined upon by joint vote of both houses of the general assembly,<sup>1</sup> at the present session, to be known and styled, "The Branch of the Bank of the State of Alabama."

§ 2. The president and directors of the Bank of the State of Alabama, are hereby required, in behalf of the state, in eight months after the passage of this act, to supply the branch bank hereby established, with three hundred thousand dollars, to be set apart and applied to said branch bank: *Provided*, The same can be obtained by loan not exceeding five per centum per annum; and no part of the present capital stock of the Bank of the State of Alabama shall be furnished said branch bank.

§ 3. For the management of the concerns of said branch bank, the legislature shall proceed to elect, by joint vote of both houses, a president and twelve directors, whose office shall continue for one year, and until their successors shall be duly qualified; and all subsequent elections for president and directors, shall be by joint vote of both houses of the general assembly.

§ 4. The following powers, rules, conditions, limitations, and restrictions, shall be the fundamental laws of said branch bank, viz. 1st. The president and directors, for the time being, shall have power to elect and remove the cashier, and such other officers, and clerks under them, as shall be necessary to execute the business of said branch bank, and allow them such compensation for their services, as shall be fixed by law. 2d. They shall receive money on deposit, and pay out the same to order, free of expense; deal in bills of exchange, and discount notes, made payable and negotiable at said branch bank, with two or more good and sufficient securities thereon, at a rate of interest not exceeding six per cent. per annum: no individual, partnership, or body corporate, (the trustees of the university of the state of Alabama, in their corporate capacity excepted,) shall be indebted, either directly or indirectly, by discount of any note or notes, in a greater amount than two thousand dollars. 3d. In case of vacancy, by death, resignation, or removal out of the state, of any director, a majority of the directors shall fill such vacancy, and the directors so appointed, shall hold his or their offices during the unexpired term of the director or directors, dying, resign-

<sup>1</sup>Fixed at Montgomery by joint vote, January 21, 1832.—See journals of the general assembly for 1831—2.



ing, or removing out of the state. 4th. In case of death, resignation, <sup>In office of president.</sup> or removal out of the state, of the president, unless such removal be temporary, and he has permission of the board of directors, the directors shall appoint one of their own body president, who shall serve until his successor shall be elected by the next general assembly; no person who is not a citizen of this state, or who is a director <sup>Who disqualified.</sup> of any other bank, or a co-partner of any such director, shall be eligible as president or director of said branch bank. 5th. Not less <sup>Not less than five to be a quorum.</sup> than five directors shall constitute a board for the transaction of business, of whom the president shall always be one, except in case of sickness, or necessary absence, in which event the board may appoint, for the time being, a president *pro tem*. 6th. The directors <sup>Directors to keep regular entries of their proceedings.</sup> shall keep fair and regular entries of all their proceedings, in a well bound book to be provided for that purpose; and upon all questions, when one director may require it, the *yeas* and *nays* shall be duly recorded on the minutes, and those minutes shall, at all times, on demand, be produced to the legislature, or any committee thereof, who may be duly authorized to require the same; and on all such questions, every member present shall be required to vote. 7th. The president, directors, cashier, and officers and servants, shall take <sup>Official oath of president, &c.</sup> and subscribe the following oath, before entering on the discharge of the duties of their respective offices, to wit: "I do solemnly swear (or affirm, as the case may be,) that I will faithfully and correctly, to the best of my skill and ability, discharge the trust reposed in me as \_\_\_\_\_ of the Branch Bank of the State of Alabama, so long as I may continue to discharge the duties of said office: So help me God."<sup>2</sup>

§ 5. The Branch of the Bank of the State of Alabama, hereby es- <sup>Duration of charter, and powers of president and directors.</sup> tablished, shall continue until the first day of January, one thousand eight hundred and forty-five, and the president and directors shall have power to ordain, establish, and put into execution, such by-laws, ordinances, and regulations, as shall seem necessary and convenient for the good government of the same, not contrary to the laws and constitution of the state; and generally to do and execute all and singular such acts, matters, and things as to them shall or may seem necessary to be done, subject, however, to the rules, restrictions, limitations, and provisions prescribed in this act: *Provid-* <sup>Proviso.</sup> *ed*, That they shall not be authorized to expend more than five thousand dollars, for a banking house.

§ 6. The president and directors of the branch bank, hereby es- <sup>Its notes, how issued and where payable.</sup> tablished, shall have power to issue notes, signed by the president, and countersigned by the cashier, not under the denomination of one dollar: *Provided*, All bills or notes issued by said branch bank, shall be made payable in specie, at the counter of said bank.

§ 7. It shall be the duty of the president and directors of the said <sup>President and directors to report to the bank of the state.</sup> branch bank, to furnish the president and directors of the Bank of the State of Alabama, at least once every three months, if required by said bank, statements showing the amount of notes discounted, the amount of specie and bank notes on hand, the debts due to and from the same, and the amount of moneys deposited therein; and the president and directors of the Bank of the State of Alabama, or a

<sup>1</sup> Number reduced to three, besides the president. See "Branch Banks—Their Liquidation," § 3.

<sup>2</sup> For other oaths, see "Bank of the State and Branches—General Provisions," § 9 and 23.



committee of the same appointed for that purpose, shall have a right to inspect the books of said branch bank, whenever they may deem it necessary; and they shall faithfully report every violation of the fundamental rules of said branch bank, to the general assembly.

Punishment  
of officers,  
&c. for em-  
bezzlement.

§ 8. If any director, cashier, or other officer or agent of said branch bank, shall embezzle,<sup>1</sup> or fraudulently convert to his or their own use, any sum of money, bank notes, bill of exchange, check, bond, or other security, placed under his or their care and management, by virtue of his or their trust or place aforesaid, the person or persons so offending, his or their abettor or counsellor, upon conviction thereof, shall be judged guilty of felony, and sentenced to imprisonment in the jail of the county in which the offence may have been committed, for a term not less than twelve months, and there remain until he or they shall make good all damages which the bank may have sustained by his or their misconduct, and be fined at the discretion of the jury trying said offence, and shall, forever thereafter, be disqualified from holding any office of profit, trust, or emolument, in the state of Alabama.

May collect  
its debts by  
motion in  
the circuit  
court.

§ 9. If any person shall be indebted to said branch bank, as maker or endorser of any note, bill, or bond, expressly made negotiable and payable at said branch bank, or on any bill of exchange purchased by said branch bank, payable at any place in or out of the state of Alabama, and shall delay payment thereof, it shall be lawful for the president thereof, after having given thirty days' notice to the maker or endorser, as the case may be, to move the circuit or county court of the county in which said branch bank may be established, on producing to said court, before whom the motion is made, the certificate of the president thereof, that the debt is, really and *bona fide*, the property of the Branch of the Bank of the State of Alabama, for judgment; and the court shall proceed to render judgment accordingly.

Citizens'  
privilege in  
borrowing.

§ 10. The citizens of this state shall be, and they are hereby authorized and at liberty to borrow money of the principal bank, or any branch or branches thereof, wherever they may choose to apply.

Who may  
not endorse.

§ 11. It shall not be lawful for the president, directors, cashier, or other officers of said branch bank, or any member of the general assembly, to become endorser for each other, or any other person or persons of said branch bank.

When to  
commence  
operations.

§ 12. It shall not be lawful for the president and directors of said branch bank, to commence operations, by discounting or issuing any notes or bills, until half of the capital stock of said branch bank shall be had in specie in its vaults.

Debts not to  
exceed twice  
the amount  
of capital.

§ 13. The total amount of the debts, which said corporation shall at any time owe, whether by bond, note, bill, or contract, shall not exceed twice the amount of its capital, over and above the moneys then actually deposited in the bank for safe keeping, unless the contracting of any greater debt shall have been previously authorized by a law of this state; and in case of excess, the directors, under whose administration it shall happen, shall be liable for the same in their private capacities, and an action of debt may, in such case, be brought against them, or any of them, their, or any of their heirs, executors, or administrators, in any court of this state having jurisdiction, by any creditor of said corporation, and may be prosecuted to judgment

In case of ex-  
cess, direct-  
ors individu-  
ally liable.

<sup>1</sup> See "Penal Code," chap. 4, s. 33.



and execution, any condition, covenant, and agreement to the contrary notwithstanding; but this shall not be construed to exempt said bank, or the lands, tenements, goods, or chattels of the same; and on their insufficiency, the state of Alabama, from being also liable for, and being chargeable with, the said excess. Such of the said directors as may have been absent when said excess was contracted or created, or who may have dissented from the resolution or act by which the same was contracted, or created, may, respectively, exonerate themselves from being individually liable, by entering, if present, their dissent on the books of the bank, at the time the debt may be so contracted, and forthwith giving notice of the same to the comptroller of the state.

§ 14. The credit of the state of Alabama is hereby pledged for the ultimate redemption and payment of all notes issued, and all debts contracted, by said branch bank.

Proviso.

Credit of state pledged.

§ 15. The remedy for collecting debts shall be reciprocal, for and against the said branch bank.

Remedy reciprocal.

§ 16. The governor, comptroller, and treasurer of the state, and president of the Bank of the State of Alabama, are hereby authorized and required, to issue certificates of state stock, to an amount not exceeding three hundred thousand dollars, to bear interest not exceeding five per centum per annum, payable semi-annually, at the Bank of the State of Alabama, or at such other place as may be agreed upon, redeemable at the expiration of twenty years, or at any time thereafter that the state may choose, and sell said stock for cash, provided the same can be disposed of at par; and the sum to be realized shall be applied to, and shall compose the capital of the said Branch of the Bank of the State of Alabama.

Capital to be raised by sale of state stock.

§ 17. To secure the regular and punctual payments of the interest semi-annually, and the ultimate redemption of said stock, all the revenue of the state, (except the university fund, the three per cent. fund, and the fund arising from the sale of the sixteenth sections,) is hereby pledged, and in case of a deficiency, the faith of the state is hereby solemnly pledged, to provide such additional means as may be necessary.

Revenue and faith of the state pledged for its redemption.

§ 18. The governor, comptroller, and treasurer of the state, and president of the Bank of the State of Alabama, are hereby authorized and required to issue certificates of state stock to an amount not exceeding five hundred thousand dollars, to bear interest not exceeding five per centum per annum, payable semi-annually, at the Bank of the State of Alabama, or at such other place as may be agreed upon, redeemable at the expiration of thirty years, or at any time thereafter the state may choose; and said certificates of stock shall be drawn in sums of from one to ten thousand dollars each; and it shall be the duty of the treasurer of the state, to provide a suitable book and register said certificates therein, and shall then deliver the same to the president or any committee of said branch bank,<sup>1</sup> taking his or their receipts for the same; and it shall be the duty of the president and directors of said branch bank, to cause said certificates of stock to be sold for cash, at par, and for the highest premium they can command above their par value; and the sums thus realized, shall be applied to, and shall compose a part of the capital stock of said branch bank.

1832—(29)

Sec. 1. Governor and commissioners required to issue state stock.

For what amount and term. State treasurer's duty.

Sale of certificates.

<sup>1</sup> At Montgomery.—See title of the act.



*Ib. Sec. 2.*  
Revenue of  
the state  
pledged.

§ 19. To secure the regular and punctual payment of the interest, semi-annually, and the ultimate redemption of said stock, all the revenue of the state, (except the university fund, the three per cent. fund, and fund arising from the sale of sixteenth sections,) is hereby pledged, and in case of deficiency, the faith of the state is hereby solemnly pledged to provide such additional means as may be necessary.

*Ib. Sec. 3.*  
Officers to  
give bond.

§ 20. Every president and cashier, before he enters on the execution of his duty, shall give bond, with two or more securities, in a sum not less than fifty thousand dollars, to the satisfaction of the directors, conditioned for his good behavior, and the teller and clerks shall give security in a sum not less than ten nor more than twenty thousand dollars, which bond shall not be void upon any one or more recovery, conditioned as aforesaid.

*Ib. Sec. 4.*  
President  
and directors  
to furnish  
general as-  
sembly with  
an exhibit of  
the condition  
of the bank.  
General as-  
sembly may  
inspect books  
of the bank.

§ 21. It shall be the duty of the president and directors to furnish to the general assembly, within the first week of every session, statements of the amount of the capital of said branch bank, and of the debts due to the same, of the moneys deposited therein, of the notes in circulation, and of the cash on hand, together with all other property of said branch bank, both real and personal; and the general assembly shall have a right to inspect such general accounts in the books of the branch bank, as shall relate to the said statements, and shall, when it may deem necessary, appoint a joint committee of both houses of the general assembly for that purpose, with full powers to send for persons and papers: *Provided*, That nothing in this clause shall imply a right of inspecting the deposits of any private individual or individuals, or any body politic or corporate, with the branch bank.

*Ib. Sec. 5.*  
Officers of  
the bank or  
members of  
the general  
assembly not  
to endorse.

§ 22. It shall not be lawful for the president, directors, cashier, or other officers of said branch bank, or any member of the general assembly, to become security for each other, or any other person or persons, at said branch bank.

## BRANCH AT DECATUR.

1832—(24)  
Branch bank  
established.

§ 1. *Be it enacted, &c.* That a Branch Bank of the State of Alabama is hereby established, at such place as shall be selected in the Tennessee Valley,<sup>1</sup> by joint vote of both houses of the present general assembly to be known and styled, "The Branch of the Bank of the State of Alabama, at \_\_\_\_\_."

President  
and directors  
to be elected.

§ 2. For the management of the concerns of said branch bank, the present legislature, by joint vote of both houses, shall proceed to elect a president and twelve directors, whose office shall continue one year, and until their successors shall be duly qualified; and all subsequent elections for president and directors shall be by joint vote of both houses of the general assembly.

Its powers,  
rules, &c.

§ 3. The powers, rules, limitations, and restrictions contained in the fourth section of an act, establishing a Branch of the Bank of the State of Alabama, at Montgomery, shall be the fundamental laws of the branch bank hereby established: *Provided*, That hereafter, no person exercising the occupation of a public or private agent, to pro-

<sup>1</sup> Fixed at Decatur, by joint vote.—See the journals of the extra session of 1832.



cure discounts, or agent for any other banking institution, in or out of this state, or the co-partners of any such agent, or any person holding the office of bank attorney, or the partner of such attorney, shall be eligible to any other office of trust or profit, in the Bank of the State of Alabama, or any branch thereof: *Provided, also*, That hereafter the president and directors, and all other officers of the Bank of the State of Alabama, and the branches thereof, before they enter on the duties of their respective offices, shall take the following oath, in addition to the other oaths prescribed by law: "I, \_\_\_\_\_, solemnly swear (or affirm, as the case may be,) that I will not, either directly or indirectly, violate the act entitled 'An Act regulating the rate of interest,' while I continue in the office of \_\_\_\_\_, in the Bank or Branch of the Bank of the State of Alabama: So help me God."

Who not eligible to office in the state bank or branches.

Oath of bank officers.

§ 4. The branch of the bank, hereby established, shall continue until the first day of January, one thousand eight hundred and forty-six; and the president and directors shall have power to ordain, establish, and put in execution, such by-laws, ordinances, and regulations, as shall seem necessary and convenient, for the good government of the same, not contrary to the laws and constitution of the state; and generally, to do and execute all and singular such acts, matters and things, as to them shall or may seem necessary to be done, subject, however, to the rules, restrictions, limitations, and provisions contained in this act: *Provided*, They shall not be authorized to expend more than seven thousand dollars for the purchase of a lot, and the erection of a banking-house.

Duration of charter.

By-laws.

Amount for banking-house and lot.

§ 5. The president and directors of the branch bank, hereby established, shall have power to issue notes, signed by the president, and countersigned by the cashier, not under the denomination of one dollar: *Provided*, All bills or notes issued by said branch bank, shall be made payable in specie, at the counter of said bank.

Power to issue notes.

Proviso.

§ 6. It shall be the duty of the president and directors of said branch bank, to furnish the president and directors of the Bank of the State of Alabama, once every three months, and oftener if required, statements, showing the amount of notes discounted, the amount of notes and specie on hand, the debts due to and from the same, and the amount of money deposited therein; and the president and directors of the Bank of the State of Alabama, or a committee of the same, appointed for that purpose, shall have a right to inspect the books, funds, and property of said branch bank, whenever they may deem it necessary; and they shall faithfully report all and every violation of the fundamental rules of said branch bank, to the general assembly.

Branch to furnish state bank with certain statements.

Inspection of branch bank.

§ 7. If any director, cashier, or other officer, or agent of said bank, shall embezzle,<sup>1</sup> or fraudulently convert to his or their own use, any sum of money, bank notes, bills of exchange, check, bond, or other security, placed under his or their care and management, by virtue of his or their place of trust aforesaid, the person or persons so offending, his or their abettor or counsellor, upon conviction thereof shall be judged guilty of felony, and sentenced to imprisonment, in the jail of the county, in which the offence may have been committed, for a term not less than twelve months, and there remain, until he or they shall make good all damages, which the bank may have sustained by

Penalty for embezzling money.

<sup>1</sup> For other oaths, see "Bank of the State and Branches—General Provisions," § 9 and 23.

<sup>2</sup> See "Penal Code," chap. 4, § 33.



his or their misconduct; and shall, forever thereafter, be disqualified from holding any office of profit or trust, in this state.

To collect its  
debts by mo-  
tion.

§ 8. If any person shall be indebted to said branch bank, as maker or endorser of any note, bill, or bond, expressly made negotiable and payable at said branch bank, or any bill of exchange purchased by said bank, payable at any place in or out of this state, and shall delay payment thereof, it shall be lawful for the president thereof, after having given thirty days' notice to the maker or endorser, as the case may be, to move the circuit or county court, of the county in which said bank may be established, for judgment, upon producing to said court, before which the motion shall be made, the certificate of the president thereof, that the debt is, really and *bona fide*, the property of the said Branch Bank of the State of Alabama; and either the circuit or county court of said county shall proceed to render judgment accordingly.

When to dis-  
count.

§ 9. It shall not be lawful for the president and directors of said branch bank, to commence operations by issuing or discounting notes, until one half of the amount of money, raised from the stock created by this act, shall be paid in gold or silver, and deposited in the vaults of the bank: *Provided*, That the said bank shall not commence operations, until two hundred thousand dollars of said stock shall have been sold.

Officers of  
the bank and  
members of  
the legisla-  
ture not to be  
endorsers.

§ 10. It shall not be lawful for the president, directors, or cashier, or other officer of said branch bank, or any member of the general assembly, to become endorsers for each other, or any other person or persons in said branch bank.

Debts of the  
branch shall  
not exceed  
twice the  
amount of  
capital.

§ 11. The total amount of the debts, which the said corporation shall at any one time owe, whether by bond, note, bill, or contract, shall not exceed twice the amount of its capital, over and above the moneys there actually deposited for safe keeping, unless the contracting of any greater debt shall have been previously authorized by law; and in case of excess, the directors under whose administration it shall happen, shall be liable for the same in their private capacities; and an action of debt may, in such case, be brought against them, or any of them, their or any of their heirs, executors, or administrators, in any court of this state having jurisdiction, by any creditor of said corporation; and may be prosecuted to judgment or execution, any condition, covenant, and agreement to the contrary notwithstanding: but this shall not be so construed as to exempt said bank, or the lands, tenements, goods, or chattels of the same, and in case of their insufficiency, the state of Alabama, from also being liable for, and being chargeable with, the said excess: *Provided*, That such of the directors who may have been absent, when said excess may have been contracted or created, or who may have dissented from the resolution or the act, by which the same was contracted or created, may exonerate themselves from being individually liable, by entering, if present, their dissent on the books of the bank, at the time the debts may be so contracted, and forthwith giving notice of the same to the comptroller of the state.

Directors  
liable.

Proviso.

Credit of the  
state  
pledged.

§ 12. The credit of the state of Alabama is hereby pledged, for the ultimate redemption of all notes issued, and all debts contracted by said branch bank.

Remedy for  
and against  
the bank to  
be recip-  
rocal.

§ 13. The remedy for the collection of debts shall be reciprocal, for and against the bank.

Certificates  
of stock to be  
issued.

§ 14. The governor, comptroller, and treasurer of the state, and president of the Bank of the State of Alabama, are hereby authorized and required, to issue certificates of state stock, to an amount not



exceeding one million of dollars, to bear an interest, not exceeding five per centum per annum, payable semi-annually, at the Bank of the State of Alabama, or at such other place as may be agreed upon, redeemable at the expiration of thirty years, or at any time thereafter the state may choose. And said certificates of stock shall be drawn in sums of from one to ten thousand dollars each; and it shall be the duty of the treasurer of the state, to provide a suitable book, and register said certificates therein; and shall then deliver the same to the president or any committee of directors of said branch bank, taking his or their receipts for the same. And it shall be the duty of the president and directors of said branch bank, to cause said certificates of stock to be sold for cash and at par, and for the highest premium they can command above par value; and the sums thus realized, shall be applied to, and shall compose the capital of said branch bank hereby established.

§ 15. To secure the regular and punctual payment of the interest semi-annually, and the ultimate redemption of said stock, all the revenue of the state, (except the university fund, the three per cent fund, and fund arising from the sale of the sixteenth sections,) shall be, and the same is hereby pledged; and in case of deficiency, the faith of the state is hereby solemnly pledged to provide such additional means as may be necessary.

§ 16. The president and cashier of the Branch of the Bank of the State of Alabama, at Decatur, shall, before entering on the duties of their offices, give bond, with approved security, in a sum not less than fifty thousand dollars.

To be registered.

To be sold.

Revenue of the state pledged for their payment.

1835—(5)

Sec. 1. President and cashier to give bond and security to amount of \$50,000.

### BRANCH AT MOBILE.

§ 1. *Be it enacted, &c.* That a Branch of the Bank of the State of Alabama, with a capital of two millions of dollars, is hereby established in the city of Mobile, to be styled "The Branch of the Bank of the State of Alabama, at Mobile."

§ 2. For the management of the concerns of said branch bank, the legislature shall annually proceed to elect by joint vote of both houses, a president and fourteen<sup>1</sup> directors, whose office shall continue for one year, and until their successors shall be duly qualified; and all subsequent elections for president and directors, shall be by joint vote of both houses of the general assembly.

§ 3. The following powers, rules, conditions, limitations and restrictions, shall be the fundamental laws of said branch bank, viz: First, The president and directors, for the time being, shall have power to elect and remove the cashier, and such other officers and clerks under them, as shall be necessary to execute the business of said branch bank, and allow them such compensation for their services, as shall be reasonable and just: Second, They shall receive money on deposit, and pay out the same to order free of expense; deal in bills of exchange, and discount notes made payable and negotiable at said branch bank, at a rate of interest not exceeding six per cent. per annum;

1832—(26)  
Capital stock.

Election of president and directors.

Power of president and directors.

Cashier, &c.

Deposit.

Rate of interest.

<sup>1</sup> The number of directors is now reduced to three.—See "Branch Banks—Their Liquidation," § 3.



Vacancies,  
how filled.

Who not eli-  
gible as pre-  
sident or di-  
rector.

Six directors  
to constitute  
a board.

Books to be  
kept and pro-  
ceedings en-  
tered.

Oath of offi-  
cers.

Officers to  
give bond.

Empowered  
to issue  
notes.

and all notes, that have from six to nine months to run, may be discount-  
ed at a rate of interest not to exceed seven per cent. per annum; and all  
notes, that have from nine to twelve months to run, may, in like man-  
ner, be discounted at a rate of interest not to exceed eight per cent. per  
annum: Third, In case of vacancy, by death, resignation, or removal  
out of the state, of any director, a majority of the directors shall fill  
such vacancy, and the director or directors, so appointed, shall hold  
his or their office during the unexpired term of such director or di-  
rectors: Fourth, in case of death, resignation, or removal out of the  
state, of the president, unless such removal be temporary, and he has  
permission of the board of directors, the directors shall appoint one  
of their own body, president, who shall serve until his successor  
shall be elected by the next general assembly. No person who is  
not a citizen of this state, or who is a director of any other bank, or  
co-partner of any such director, shall be eligible as president or  
director of said bank: Fifth, Not less than six<sup>1</sup> of the directors shall  
constitute a board for the transaction of business, of whom the presi-  
dent shall always be one, except in case of sickness or necessary  
absence, in which event the board may appoint, for the time being,  
a president *pro tempore*: Sixth, The directors shall keep fair and  
regular entries of all their proceedings, in a well-bound book to be  
provided for that purpose, and upon all questions, when one director  
may require it, the yeas and nays shall be duly recorded on the  
minutes; and those minutes shall, at all times, on demand, be pro-  
duced to the legislature, or any committee thereof, who may be duly  
authorized to require the same; and on all such questions, every  
member present shall be required to vote: Seventh, The president,  
directors, cashier, and officers and servants, shall take and subscribe  
the following oath, before entering on the discharge of the duties of  
their respective offices, to wit: "I solemnly swear (or affirm, as the  
case may be) that I will, faithfully and correctly, to the best of my  
skill and ability, discharge the duties reposed in me as  
of the Branch of the Bank of the State of Alabama, at Mobile; and  
that while I am such, I will not violate the provisions of an act,  
entitled 'An Act to regulate the rate of interest,' passed December  
17, 1819, so long as I continue to discharge the duties of said office:  
So help me God."<sup>2</sup>

§ 4. Every president and cashier, before he enters on the execu-  
tion of his duty, shall give bond, with two or more securities, in a  
sum not less than fifty thousand dollars, to the satisfaction of the  
directors, conditioned for his good behavior; and the teller and clerks  
shall give security in a sum not less than ten nor more than twenty  
thousand dollars, which bond shall not be void upon any one or more  
recovery, conditioned as aforesaid.

§ 5. The president and directors shall have power to issue notes,  
signed by the president, and countersigned by the cashier, not under  
the denomination of one dollar, on the behalf of said branch bank, for  
such sums, and with such devices, as they may deem most expedient  
and safe; and they shall also be capable of exercising such other  
powers and authorities, as may be necessary for the well governing  
and ordering the affairs of said branch bank, and of promoting its  
interest and its credit.

<sup>1</sup> Three directors and the president now sufficient.—See preceding note.

<sup>2</sup> For other oaths to be taken by bank officers, see "Bank of the State and  
Branches—General Provisions," § 9 and 23.



§ 6. It shall be the duty of the president and directors, to furnish to the general assembly, within the first week of every session, statements of the amount of the capital of said branch bank, and of the debts due to the same; of the moneys deposited therein; of the notes in circulation, and of the cash on hand; together with all other property of said branch bank, both real and personal; and the general assembly shall have a right to inspect such general accounts in the books of the branch bank, as shall relate to the said statements; and shall, when it may be deemed necessary, appoint a joint committee of both houses of the general assembly for that purpose, with full powers to send for persons and papers: *Provided*, That nothing in this clause shall imply a right of inspecting the deposits of any private individual or individuals, or any body politic or corporate, with the branch bank.

Legislature to be furnished with a statement of the transactions of the bank.

May inspect books of the bank.

§ 7. If any person or persons shall be indebted to said branch bank, as maker or endorser of any note, bill, or bond, expressly made payable and negotiable at said branch bank, and shall delay payment thereof, it shall be lawful for the president of the branch bank, after having given thirty days' notice thereof, to move the circuit or county court of the county of Mobile, on producing to said court, before which the motion is made, the certificate of the president of the branch bank, that the debt is, really and *bona fide*, the property of said branch bank, for judgment; and all the debts, due by said branch bank, by bond, bill, note or otherwise, to any individual or body corporate, may be sued for and recovered in like manner.

Mode of collecting debts for and against the bank.

§ 8. If any of the officers of the said branch bank shall embezzle,<sup>1</sup> or fraudulently convert to his or their own use, any sum of money, bank note, bill of exchange, check, bond, or other security, placed under his care by virtue of his said office, he or they, his or their aider or abettors and counsellors, upon conviction thereof, shall be judged guilty of felony, and be sentenced to imprisonment in the public jail in the county in which the offence has been committed, for a term not less than twelve months, and there remain, until he or they shall make good all damages, which the bank may have sustained by his or their misconduct, and be fined at the discretion of the jury trying the offence, and shall, forever thereafter, be disqualified from holding any office of profit or trust in this state, and shall, moreover, be liable for the sum so embezzled.

Officers embezzling its funds.

Penalty.

§ 9. It shall not be lawful for the directors, cashier, or other officers of the said branch bank, or any member of the general assembly, to become security for each other, or any other person or persons at said branch bank.

Officers of the bank and members of general assembly not to endorse.

§ 10. It shall not be lawful for the said president and directors of the said branch bank, to commence operations, by discounting or issuing any notes or bills, until one half of the capital stock of said branch bank shall be had in specie in its vaults.

When to commence discounting.

§ 11. The total amount of the debts, which the said branch bank shall, at any one time, owe, whether by bond, note, bill or contract, shall not exceed twice the amount of its capital, over and above the moneys then actually deposited in the bank for safe keeping, unless the contracting of any greater debt shall have been previously authorized by a law of this state; and in case of excess, the directors, under whose administration it shall happen, shall be liable for the same in their private capacities, and an action of debt may, in such

Debts of the bank limited

<sup>1</sup> See "Penal Code," chap. 4, § 33.



case, be brought against them, or any of them, their or any of their heirs, executors or administrators, in any court of this state having jurisdiction, by any creditor or creditors of said branch bank, and may be prosecuted to judgment and execution, any condition, covenant and agreement to the contrary notwithstanding; but this shall not be so construed as to exempt said bank, or the lands, tenements, goods or chattels of the same, and on their insufficiency, the state of Alabama, from being also liable for, and being chargeable with, the said excess: such of the said directors, who may have been absent when said excess was contracted or created, or who may have dissented from the resolution or act by which the same was contracted or created, may, respectively, exonerate themselves from being individually liable, by entering, if present, their dissent on the books of the bank, at the time the debt may be so contracted, and forthwith giving notice of the same to the comptroller of the state.

Credit of the state pledged.

§ 12. The credit of the state of Alabama is hereby pledged for the ultimate redemption and payment of all notes issued, and all debts contracted by said branch bank.

Collection of debts reciprocal. Governor and commissioners authorized to issue state stock. For what amount and term.

§ 13. The remedy for collecting debts shall be reciprocal, for and against the said branch bank.

Proviso.

§ 14. The governor, comptroller, and treasurer of the state, and president of the Bank of the State of Alabama, are hereby authorized and required to issue certificates of state stock, to an amount not exceeding two millions of dollars, to bear an interest not exceeding five per cent. per annum, payable semi-annually, at the branch bank at Mobile, the Bank of the State of Alabama, or at such other place as may be agreed upon, redeemable at the expiration of thirty years, or at any time thereafter that the state may choose: *Provided*, That the certificates of stock shall be drawn in sums of from one to ten thousand dollars each; and it shall be the duty of the treasurer of the state, to provide a suitable book, and register the said certificates therein, and then deliver the same to the president and directors of the said branch bank, taking their receipts for the same; and it shall be the duty of the said president and directors, to cause said certificates to be sold for cash at not less than par value, and for such premium as they can command above their par value; and the sum to be realized shall be applied to, and compose the capital of said Branch of the Bank of the State of Alabama, at Mobile.

Sales of certificates.

Revenue of the state pledged.

§ 15. To secure the regular and punctual payments of the interest, semi-annually, and the ultimate redemption of said stock, all the revenue of the state (except the university fund, the three per cent. fund, and the fund arising from the sale of the sixteenth sections,) shall be and the same is hereby pledged, and in case of a deficiency, the faith of the state is hereby pledged, to provide such additional means as may be necessary.

1834—(3)  
Sec. 1.  
Repeal of part of 3rd section of bank charter

§ 16. So much of the third section of an act entitled "An Act to establish a Branch of the Bank of the State of Alabama at Mobile," approved 4th December, 1832, as prohibits the president and directors from discounting any note, bill or bond, unless it be made negotiable and payable in said bank, and so much of the last proviso, in the ninth section of an act entitled "An Act to establish a bank in the town of Mobile," passed November 20th, 1818, as prescribes, that no note, bill or bond shall be negotiable at said bank, unless it shall be so expressed on the face of said note, bill or bond, are hereby repealed.

Repeal of part of 9th section of the Mobile bank charter

*Ib.* Sec. 2.  
Notes or bills recoverable,

§ 17. If any person or persons shall be indebted to either of said banks, as maker or endorser, on any note, bill or bond, expressly



made negotiable and payable at any bank within the city of Mobile, and shall delay payment thereof, it shall be lawful for either of the aforesaid banks, which may be the *bona fide* owner of any such note, bill or bond, to recover judgment on the same, in the manner and form now provided for in the respective charters of said banks: *Provided*, That any such note, bill or bond, shall not be protested for non-payment, until it shall have been presented to the bank for payment, where it is expressly made payable.

### BRANCH AT HUNTSVILLE.

§ 1. *Be it enacted, &c.* That a Branch of the Bank of the State of Alabama, with a capital of five hundred thousand dollars, be, and the same is, hereby established at Huntsville, in the county of Madison, to be known and styled "The Branch of the Bank of the State of Alabama, at Huntsville."

§ 2. For the management of the concerns of said branch bank, the legislature shall proceed to elect, by joint vote of both houses, a president and twelve directors, whose office shall continue for one year, and until their successors shall be duly qualified, and all subsequent elections, for president and directors, shall be by joint vote of both houses of the general assembly.

§ 3. The following rules, powers, conditions, limitations, and restrictions, shall be the fundamental laws of said branch bank, viz: 1st. The president and directors, for the time being, shall have power to elect and remove the cashier, and such other officers and clerks under them, as shall be necessary to execute the business of said branch bank, and allow them such compensation for their services, as shall be fixed on, by law. 2d. They shall receive money on deposit, and pay out the same to order, free of expense; deal in bills of exchange, and discount notes, made payable and negotiable at said branch bank, at a rate of interest not exceeding six per cent. per annum; no individual, co-partnership, or body corporate, shall be indebted, directly or indirectly, by discount of any note or notes, in a greater amount than two thousand dollars. 3d. In case of vacancy, by death, resignation, or removal out of the state, of any director, a majority of the directors shall fill up such vacancy, and the director or directors, so appointed, shall hold his or their office, during the unexpired term of such director or directors. 4th. In case of death, resignation, or removal out of the state, of the president, unless such removal be temporary, or by permission of the board of directors, the directors shall appoint one of their own body president, who shall serve, until his successor shall be elected by the next general assembly; no person, who is not a citizen of the state, or who is a director of any other bank or co-partner of any such director, shall be eligible, as president or director of said branch bank. 5th. Not less than seven directors shall constitute a board for the transaction of business, of whom the president shall always be one, except in case of sickness or necessary absence, in which event the board may appoint, for the time being, a president *pro tempore*. 6th. The directors

<sup>1</sup> Number reduced to three and the president—see "Branch Banks—Their Liquidation," § 3.



Books to be kept and proceedings entered.

shall keep fair and regular entries of all their proceedings in a well bound book, to be provided for that purpose; and upon all questions, where one director may require it, the yeas and nays shall, at all times, on demand, be produced to the legislature or any committee thereof, who may be duly authorized to require the same, and, on all such questions, every member present shall be required to vote.

Oath of officers.

7th. The president, directors, cashier, and officers and servants, shall take and subscribe the following oath, before entering on the discharge of the duties of their respective offices: "I solemnly swear, (or affirm, as the case may be,) that I will faithfully, impartially and correctly, to the best of my skill and ability, discharge the trust reposed in me, as \_\_\_\_\_ of the Branch of the Bank of the State of Alabama, at Huntsville, and that whilst I am such, I will not violate the provisions of an act, entitled 'An Act to regulate the rate of interest,' passed December 17, 1819, so long as I may continue to discharge the duties of said office: So help me God."<sup>1</sup>

Officers to give bond.

§ 4. Every president and cashier, before he enters on the execution of his duty, shall give bond, with two or more securities, in a sum of not less than fifty thousand dollars, to the satisfaction of the directors, which shall be forwarded to the seat of government, to be approved by the governor, comptroller and treasurer of the state, or a majority of them, and filed in the comptroller's office, conditioned for his good behavior; and the teller and clerks shall give security, in a sum not less than ten thousand dollars, to be approved by the president and directors of said branch bank, and conditioned as aforesaid.

Empowered to issue notes.

§ 5. The president and directors shall have power to issue notes, signed by the president and countersigned by the cashier, on the behalf of said branch bank for such sums, and with such devices as they may deem most expedient and safe; and they shall be capable of exercising such other powers and authority, as may be necessary for the well governing and ordering the affairs of said branch bank, and for promoting its interest and its credit.

Legislature to be furnished with statements of capital, debts and transactions of bank.

§ 6. It shall be the duty of the president and directors, to furnish the general assembly, within the first week of every session, statements of the amount of the capital of the said branch bank, and of the debts due to the same, of the moneys deposited therein, of the notes in circulation, and of the cash on hand, together with all other property of said branch bank, both real and personal; and the general assembly shall have a right to inspect all accounts, books, and papers, of every kind whatsoever, belonging to said branch bank, and shall, when it may be deemed necessary, appoint a joint committee of both houses of the general assembly for that purpose, with full power to send for persons and papers.

May inspect its books.

Mode of collecting debts for and against the bank.

§ 7. If any person or persons shall be indebted to said branch bank, as maker or endorser of any note, bill or bond, expressly made negotiable and payable at said branch bank, and shall delay payment thereof, it shall be lawful for the president of the branch bank, after having given thirty days' notice thereof, to move the circuit or county court, of the county in which said branch bank may be located, or where either of the defendants reside, on producing to such court, before whom the motion is made, a certificate of the president of the branch bank, that the debt is, really and *bona fide*, the prop-

<sup>1</sup> For other oaths—see "Bank of the State and Branches—General Provisions," § 9 and 23.



erty of said branch bank, for judgment; and all debts, due by said branch bank, by bond, bill, note, or otherwise, to any individual or body corporate, may be sued for and recovered in like manner.

§ 8. If any officer of said branch bank shall embezzle, or fraudu-  
 lently convert to his or their own use, any sum of money, bank note,  
 bill of exchange, check, bond, or other security, belonging to said  
 bank, he or they, his or their aiders or counsellors, upon conviction  
 thereof, shall be judged guilty of felony, and be sentenced to impris-  
 onment in the public jail of the county, in which the offence has  
 been committed, for a term not less than twelve months, and there  
 remain, and shall not be relieved from imprisonment by the acts of  
 insolvency, until he or they shall make good all damages which the  
 bank may have sustained by his or their misconduct, and be fined  
 at the discretion of the jury trying the offence, and shall, forever  
 thereafter, be disqualified from holding any office of profit or trust  
 in the state, and shall, moreover, be liable for the sum so em-  
 bezzled.<sup>1</sup>

Officers em-  
bezzling its  
funds.

Penalty.

§ 9. It shall not be lawful, for the president, directors, cashier  
 or other officers of said branch bank, or any member of the general  
 assembly, to become endorser or security for each other, or for  
 any other person or persons, at said branch bank.

Officers of  
bank, and  
members of  
general as-  
sembly not  
to endorse.

§ 10. It shall not be lawful for the president and directors of said  
 branch bank, to commence operations, by discounting or issuing any  
 notes or bills, until one half of the capital of said branch bank shall  
 be had in specie in its vaults.

When to  
commence  
discounting.

§ 11. The total amount of debts, which the said branch bank shall  
 at any time owe, whether by bond, note, bill or contract, shall not  
 exceed twice the amount of its capital, over and above the moneys  
 there actually deposited for safe keeping, unless the contracting of  
 any greater debt shall have been previously authorized, by a law of  
 this state; and in case of excess, the directors, under whose admin-  
 istration it shall happen, shall be liable for the same in their private  
 capacities, and an action of debt may, in such case, be brought against  
 them, or any of them, their or any of their executors or administra-  
 tors, in any court of this state having jurisdiction, by any creditor or  
 creditors of said branch bank, and may be prosecuted to judgment  
 and execution, any condition, covenant and agreement to the contrary  
 notwithstanding; but this shall not be construed to exempt said  
 bank, or the lands, tenements, goods or chattels of the same, and on  
 their insufficiency, the state of Alabama, from being also liable for,  
 and being chargeable with, said excess; such of the said directors,  
 who may have been absent, when said excess was contracted or  
 created, or who may have dissented from the resolution or act, by  
 which the same was contracted or created, may, respectively, exoner-  
 ate themselves from being individually liable, by entering, if pres-  
 ent, their dissent on the books of the bank, at the time the debt may  
 be so contracted, and forthwith give notice of the same to the comp-  
 troller of the state.

Debts of  
bank limit-  
ed.

§ 12. The credit of the state of Alabama is hereby pledged, for  
 the ultimate redemption and payment of all notes issued, and all  
 debts contracted by said branch bank.

Credit of  
state  
pledged.

§ 13. The remedy for collecting debts shall be reciprocal, for and  
 against said branch bank.

Collection of  
debts recip-  
rocal.

<sup>1</sup> See "Penal Code," chap. 4, § 33.



Governor,  
comptroller,  
treasurer,  
and presi-  
dent of the  
bank, au-  
thorized to  
issue state  
stock.

For what  
term.

For what  
amount.  
In sums to  
suit pur-  
chasers.

Sales of said  
stock, how  
to be made.

Stock to be  
registered  
and deliv-  
ered to the  
president  
and directors  
of the Bank  
of the State  
of Alabama.

Revenue and  
faith of the  
state  
pledged.

Post notes  
may be is-  
sued.

Provisos.

\$500,000 of  
proceeds of  
stock to be  
delivered to

§ 14. The governor, comptroller, treasurer of the state, and president of the state bank, are hereby authorized and required to advertise, by giving at least ninety days' notice in such newspapers as are published in the northern cities, and in this state, as they may deem necessary and proper, for the sale of one million of dollars, state bonds, bearing an annual interest of five per cent., payable, semi-annually, at the Bank of the State of Alabama, or at such other places as may be agreed upon; said bonds to be redeemable at the expiration of thirty years, or at any time thereafter that the state may choose; which sale shall take place in the city of Tuscaloosa; and when the contract for the sale of the said bonds has been effected, then it shall be the duty of the governor, comptroller, treasurer of the state, and president of the state bank, to issue the certificates of state stock, not exceeding one million of dollars: *Provided*, That said certificates shall be issued in such sums as may suit the purchaser or purchasers, from one to ten thousand dollars each; *And provided, further*, That should the said bonds not be sold at Tuscaloosa, as herein provided, within one hundred and twenty days from the date of advertising the same, then and in that case, it shall be the duty of the governor to appoint some suitable agent, to effect the sale of the said bonds in the eastern cities or elsewhere; *Provided*, The agent, who shall be employed to negotiate said loan, shall not receive, as compensation, less than two thousand, nor more than four thousand dollars, at the discretion of a succeeding legislature. And it shall be the duty of the treasurer of the state, to provide a suitable book, and register said certificates therein, and then deliver the same to the president and directors of the Bank of the State of Alabama, taking their receipt therefor; and it shall be the duty of the said president and directors, to cause five hundred thousand dollars of the funds, arising from the sale of said stock, to be delivered to the president and directors of the said branch bank, taking their receipt therefor, and said five hundred thousand dollars shall compose the capital; no certificate of state stock shall be sold for a less sum than its par value, and in consideration of the duties, thus required of the governor, treasurer, comptroller and president of the state bank, and also the secretary of state for affixing the seal of the state to the said certificate, they shall require no compensation.

§ 15. To secure the regular and punctual payment of the interest, semi-annually, and the ultimate redemption of said stock, all the revenue of the state, (except the university fund, the three per cent. fund, and the fund arising from the sale of the sixteenth sections,) is hereby pledged, and in case of a deficiency, the faith of the state is hereby solemnly pledged, to provide such additional means as may be necessary.

§ 16. It shall be lawful for the president and directors of said branch bank to issue post notes, made payable at such places as they may deem expedient: *Provided, however*, Said notes shall be drawn, payable to some person or persons; and shall not have longer than ninety days to run; *Provided, also*, That no interest shall accrue on said notes, until after payment has been refused by the bank issuing the same upon demand, in which event the holder shall be entitled to the same interest and damages, as is now provided, by law, on protested bills of exchange; *Provided, also*, That said branch bank shall not issue more than one third of its paper in post notes.

§ 17. The remaining five hundred thousand dollars, which shall accrue from the sale of the state bonds for one million of dollars, directed to be sold in the fourteenth section of this act, shall be deliver-



ed, by the president and directors of the Bank of the State of Alabama, to the president and directors of the Branch of the Bank of the State of Alabama, at Decatur, taking their receipt therefor, and said five hundred thousand dollars shall be applied to, and compose a part of the capital stock of the Branch of the Bank of the State of Alabama at Decatur: *Provided, however,* That said increase of five hundred thousand dollars shall be set apart, to compose the capital stock for a Branch of the Bank of the State of Alabama, at the town of Florence, in the county of Lauderdale, whensoever, after the first day of March, 1836, the legislature of Alabama shall deem it proper to establish a branch bank at that point.

§ 18. In addition to the powers heretofore granted to the branch bank, at Huntsville, the president and directors thereof shall be authorized to discount notes, having from six to nine months to run, at a rate of interest not exceeding seven per cent. per annum, and notes having from nine to twelve months to run, at not exceeding eight per cent. per annum.

§ 19. For all debts and sums of money, due and owing to the Branch of the Bank of the State of Alabama, at Huntsville, whether by bond, note, bill of exchange, or otherwise, it shall be lawful for the president of said branch bank, at Huntsville, after having given thirty days' notice thereof, to move the circuit or county court of Madison county, for judgment against all or any of the persons, so indebted to the branch bank aforesaid.

§ 20. In all cases of motion before judgment, it shall be the duty of the president of the said branch bank, at Huntsville, to produce in court his certificate, that the debt, for which judgment is sought, is, really and *bona fide*, the property of said branch bank.

§ 21. It shall be the duty of the court, before whom motion is made, to give judgment according to the right of the case, allowing juries when the same may be necessary.

## BANK OF THE STATE AND BRANCHES.

### GENERAL PROVISIONS.

§ 1. It shall be the duty of the president of the senate, and speaker of the house of representatives, to cause a correct list to be made, of such person or persons, as may be elected by a joint vote of both houses of the general assembly, as president and directors of the Bank of the State of Alabama, or any branch thereof, and shall certify the same to be duly elected, and sign their names officially there-to, and cause the same to be attested by the secretary of the senate and clerk of the house of representatives, and transmitted to the cashier of the proper bank.

§ 2. It shall be the duty of the cashier of said bank, upon the receipt of such certificate, immediately to issue notice to each person so elected, and shall request said persons to attend, at a stated hour, at the banking-house, for the purpose of organization as a board, and take the necessary oaths of office.

§ 3. In addition to the powers heretofore granted the branch banks at Montgomery and Decatur, the president and directors shall have power to discount notes that have from six to nine months to run, at a rate of interest not to exceed seven per cent. per annum; and all notes, that have from nine to twelve months to run, may, in

the Branch  
Bank at De-  
catur.

1835—(8)  
Sec. 3.  
Branch Bank  
at Huntsville  
may discount  
notes,  
at what.

1837—(2)  
Sec. 1.  
May sue in  
circuit or  
county court.

*Ib.* Sec. 2.  
To produce  
certificate  
that debt is  
the property  
of the bank.  
*Ib.* Sec. 3.  
Court to give  
judgment,  
&c. allowing  
juries when  
necessary.

1834—(1)  
Pres. of sen-  
ate & speaker  
of house of  
rep's to issue  
certificates  
of election to  
president &  
directors of  
State Bank  
& Branches.

Cashier to is-  
sue notice.

1834—(2)  
Sec. 1.  
Branches at  
Montgomery  
and Decatur  
may discount  
notes,  
in what.



like manner, be discounted, at a rate of interest not to exceed eight per cent. per annum.

1834—(4)  
Sec. 1.  
Br. Banks to  
furnish state-  
ments to  
State Bank,  
first week in  
every ses-  
sion, show-  
ing persons  
indebted,  
sued, &c.

§ 4. It shall be the duty of the president and directors of the several branch banks, belonging to this state, to cause statements to be made out, of all persons indebted to the same, by bill of exchange or notes, noting, particularly, those under protest and in suit, and arranging the names under the head of the counties in which the parties reside; also, the date of their notes and bills of exchange, and the time that suit was commenced, and transmit the same, during the first week of the session, to the president of the state bank, to be laid before the joint examining committee, whose duty it shall be, to cause the members from the respective counties to examine and report on the same.

1834—(5)  
Sec. 1.  
Interest, how  
calculated.

§ 5. It shall be lawful for the several banks of this state, in computing their discounts or interest upon loans or notes, to calculate interest at the rate of thirty days for a month, or three hundred and sixty days to the year; and on all fractions, according to the standard of Rowlett's table of interest.

1834—(6)  
Sec. 1.  
Who may be  
attorney or  
proctor of  
said banks.

§ 6. It shall not be lawful for any director, or the partner, in the practice of law, of a director, of the Bank of the State of Alabama, or any of its branches, to act as attorney at law, or proctor for, or on behalf of, any such bank, of which he may be a director as aforesaid.

1836—(38)  
Sec. 1.  
School or col-  
lege funds  
may be de-  
posited in  
State Bank  
& Branches.

§ 7. It shall be lawful for the trustees of any school or college, that is, or may hereafter be, incorporated by the legislature of this state, to deposit, in the Bank of the State of Alabama or any of its branches, any funds belonging to said school or college: *Provided*, That such deposit shall not be made for a shorter period than five years.

1836—(39)  
Sec. 2.  
Funds to be  
under guar-  
anty of  
state.

§ 8. Said funds, so deposited, shall remain in said bank or banks, under the guaranty of the state of Alabama for its safe-keeping, at six per cent. interest per annum, which may be drawn out, or re-invested and made principal, semi-annually.

1834—(8)  
Sec. 2.  
Officers of  
several  
banks to take  
oath against  
gambling.

§ 9. The president, directors, cashier, and all other officers of the Bank of the State of Alabama and its several branches, shall take and subscribe the following oath, in addition to the one now prescribed by law, before entering on the duties of their several offices, to wit: "I, A. B. do solemnly swear (or affirm, as the case may be,) that I will not, during the time for which I have been elected as , or may serve as , in said Bank (or Branch Bank,) bet at any gaming table, such as cards, dice, billiards, or any table known as A. B. C., or E. O., or any faro bank, or any other table of like description: So help me God."

1834—(10)  
Sec. 1.  
President or  
director to  
forfeit seat  
by failing for  
ten days to  
pay a debt.

§ 10. Whenever any president or director of the Bank of the State of Alabama, or any branch bank thereof, shall neglect, fail, or refuse, for the space of ten days, to pay his notes, drafts, or bills of exchange, which may fall due in the bank to which he has been elected, and be the property of the Bank of the State of Alabama, or any branch bank thereof, his office of president or director, (as the case may be,) shall become vacant, and the board shall, at their next regular meeting, proceed to fill the same, in the manner prescribed in the charter of said bank.

1835—(4)  
Sec. 1.  
State Bank  
and Branch-  
es may issue  
post notes to  
half the  
amount of  
their paper.

§ 11. It shall be lawful for the president and directors of the Bank of the State of Alabama, and the president and directors of the several branches of said bank, each, to issue post notes, not to exceed one half of their paper, made payable at such places as they may deem expedient: *Provided, however*, That said notes shall be drawn, payable to some person or persons, and shall not have longer to run than



ninety days; *Provided, also*, That no interest shall accrue upon said notes, until after payment has been refused by the Bank, at which the same is made payable upon demand, in which event the holder shall be entitled to the same interest and damages, as is now provided for, by law, on protested bills of exchange; *Provided*, That the state bank, and the branches at Montgomery and Decatur, make one half of the post notes, issued by authority of this act, payable at Boston, New-York, Philadelphia, or Baltimore.

§ 12. It shall be the duty of the president of the Bank of the State of Alabama, and the presidents of the several branch banks thereof, to cause a statement to be made out, of their accounts, and the account of each director, cashier, and other officers of said bank, exhibiting the amount of discounts each may have received from said bank, on notes and bills of exchange, during the current year, and the amount then due on the same, and forward the same, on the first of November in each and every year, to be laid before the joint committee appointed to examine the affairs of said bank.

§ 13. It shall be the duty of the president of the Bank of the State of Alabama, and the presidents of the branch banks thereof, to answer any and every call made on them for information by either branch of the legislature.

§ 14. In no case shall one director be surety or endorser, for another director, upon any note or bill, discounted at said state bank, or branches of the Bank of the State of Alabama, at Mobile, Huntsville, Decatur, or Montgomery, and no note or bill shall be discounted at said state bank, and the branches of the Bank of the State of Alabama, when one fourth of the directors present object to such discount.

§ 15. It shall not be lawful for any person to be president or director, of the Bank of the State of Alabama, or any of its branches, or director, on part of the state, in any other bank, who may hold any share or shares of stock, in any stock bank in this state, in his own right, or as agent or guardian for another, or whose wife or minor children shall hold or own stock of any kind, in any stock bank or banks in this state.

§ 16. It shall not be lawful for the Bank of the State of Alabama, nor any branch thereof, to receive, in payment or on deposit, any note or bill of a less denomination than five dollars on any other bank, except only the said state bank and branches.

§ 17. The capital of the Branch of the Bank of the State of Alabama, at Huntsville, is hereby increased five hundred thousand dollars.

§ 18. To create the said sum of five hundred thousand dollars, it shall be the duty of the governor, comptroller, treasurer, and president of the state bank, to issue certificates of state stock to that amount, in sums from one to ten thousand dollars each; which shall bear an annual interest of five per centum, payable, semi-annually, at the said branch bank, or such other place as may be agreed upon, redeemable at the expiration of thirty years, or at any time thereafter, which the state may choose; and it shall be the duty of the treasurer of the state, to record said certificates in a suitable book, and then, to deliver the same to the president and directors of the said branch bank, taking the receipt of the president thereof, for the same. And it shall be the duty of the president and directors of the said branch bank, to sell and dispose of the said certificates of stock, in such manner as may best effect the object of this bill: *Provided*, that no part of the same shall be sold for less than the par value thereof; *And*

Provisos.

1835—(7)  
Sec. 1.  
Statement of  
liability of  
directors to  
be forwarded  
to legislature  
1st Novem-  
ber annually.

1b. Sec. 2.  
To answer  
all calls  
made by le-  
gislation.

1836—(6) (7)  
Sec. 4.  
No director  
to be secu-  
rity for  
another.

1b. Sec. 7.  
Disqualifica-  
tion for pre-  
sident or di-  
rector.

1835—(9)  
Sec. 4.  
No note or  
bill less than  
\$5 to be re-  
ceived in  
payment or  
on deposit.

1836—(5)  
Sec. 1.  
Capital of  
Huntsville  
br. increased

\$500,000.  
1b. Sec. 2.  
State stock  
to that  
amount to be  
issued by  
governor  
and others.



*provided, further,* that no compensation shall be paid, to the officers of the state herein named, for the duties required of them in issuing said stock.

*Ib. Sec. 3.*  
Revenue and faith of state pledged to redeem stock.

§ 19. For the regular and punctual payment of the interest on said stock, semi-annually, and for the ultimate redemption thereof, all the funds and revenue of the state, (except the university fund, three per cent. fund, and the fund arising from the sale of sixteenth sections,) are hereby pledged; and in case of a deficiency, the faith of the state is hereby solemnly pledged, to provide such additional means as may be necessary.

*Ib. Sec. 4.*  
Capital of state bank increased \$400,000; of Montgomery br. \$500,000; of Mobile br. \$1,000,000.

§ 20. The capital of the Bank of the State of Alabama is hereby increased four hundred thousand dollars; and the capital of the Branch of the Bank of the State of Alabama, at Montgomery, is hereby increased five hundred thousand dollars; and the capital of the Branch of the Bank of the State of Alabama, at Mobile, is hereby increased one million of dollars; and to create this said sum of four hundred thousand dollars, hereby added to the state bank, and the sum of five hundred thousand dollars, added to the branch bank, at Montgomery, and the said sum of one million of dollars, added to the Branch of the Bank of the State of Alabama, at Mobile, it shall be the duty of the governor, comptroller of public accounts, treasurer of the state, and the president of said state bank, to issue certificates of state stock for the several amounts herein before specified, in the same manner provided in the second section of this bill, in relation to the Branch of the Bank of the State of Alabama, at Huntsville, bearing the same interest, payable at the same time, and in the same manner, and redeemable at the same time provided and fixed, in relation to the said branch at Huntsville.

State stock to be issued therefor.

*Ib. Sec. 5.*  
Duty of treasurer to record certificates of stock, and deliver them to presidents of banks.

§ 21. It shall be the duty of the treasurer, and he is hereby required, to record said certificates, and to deliver the same in the same manner that he is required to record and deliver the certificates of the stock, issued to increase the capital stock of the branch bank at Huntsville; that is to say, the certificates of stock for four hundred thousand dollars, to be added to the capital stock of the state bank, shall be delivered to the president of said state bank; and the certificates of stock for five hundred thousand dollars, added to the capital stock of the branch bank at Montgomery, shall be delivered to the president of said branch; and the certificates of stock for the one million of dollars, added to the capital stock of the Branch of the Bank of the State of Alabama, at Mobile, shall be delivered to the president of said branch; and the president and directors of the said bank, and the president and directors of the said branch bank at Montgomery, and the president and directors of the Branch of the Bank of the State of Alabama, at Mobile, shall sell and dispose of the said certificates of stock in the manner they may deem best calculated to accomplish the objects of this bill: *Provided*, no part of the said stock shall be sold for less than its par value—that no compensation shall be allowed to the officers of the state herein before mentioned, for the duties required of them in issuing said stock. And the faith of the state is hereby solemnly pledged for the regular and punctual payment of the interest on said stock, semi-annually, and for the eventual redemption thereof.

Proviso.

1839—(3)

*Sec. 2.*  
No president or director to become liable to said bank or any branch.

§ 22. It shall not be lawful for the president of the Bank of the State of Alabama, or the presidents of any of the branches thereof, or any of the directors of either of said banks, to become liable or indebted, directly or indirectly, to said bank or any of the branches, or to obtain any accommodation or discount therefrom, in his own name, or



in the name of any other person or co-partnership, in any way or manner whatsoever.

§ 23. The president of the Bank of the State of Alabama, and the presidents of the several branches, and the directors, to be elected under the provisions of the first section of this act, before they enter upon the discharge of their duties, shall, severally, take and subscribe an oath, which shall be filed with the clerk of the circuit court of the county in which said banks are respectively situated, that they will not, during the time for which they are elected, become indebted to the Bank of the State of Alabama, or any of the branches thereof, either directly or indirectly, in any sum, or sums of money, either as drawer, endorser, acceptor, payer, discounter, principal or security, or in any other manner whatsoever, and that they will not vote for, or support the discount of any paper offered in bank, where they may expect to receive any portion of the proceeds in payment of any debt, or demand, that may be due them at the time, or that may thereafter become due them, and that they will, in no manner, act as agents for those applying for accommodations.

*Ib. Sec. 3.*  
Presidents  
& directors  
to take oath.

§ 24. The directors of the several branches, at Montgomery, 1839—(3) Huntsville and Decatur, shall receive five dollars *per diem*, and the directors of the branch bank at Mobile, seven dollars *per diem*, for every day they may be engaged in the discharge of their duties as directors; and it shall be the duty of the cashier, under the superintendence of the president in each bank, to keep a regular account of the days of service rendered by each director, and transmit the same to the presiding officers of each house of the general assembly, and the payment of the sums due the different directors shall be provided for, by act of appropriation, by the general assembly, at every session.

*Sec. 1.*  
Compensation  
of directors.

Cashier to  
keep account  
of days of service,  
&c.

§ 25. Three directors and the president, or acting president, shall constitute a board for the transaction of business; and three directors may form a bill committee, and the president, directors, cashier, and all the officers of the bank, shall be exempt from serving on the jury: *Provided*, That should any director fail or refuse to attend for ten days in succession, at any regular meeting of the board of directors, he shall be considered as having resigned his seat, unless prevented by sickness or other unavoidable cause, and shall be subject to all laws heretofore passed in relation to the resignation of a director.

*Ib. Sec. 2.*  
Three directors  
with president  
to be a board.  
Three a bill  
committee.  
Officers  
exempt from  
jury.  
Penalty for  
non-attendance  
at meeting of board.

§ 26. The compensation allowed as the *per diem* pay to the directors of the state bank and its branches, shall hereafter be paid by the cashier of their respective banks, as other expenses, and the amount, so paid to each of the directors, shall be included in the annual report of the cashier of the several banks to the legislature.

1841—(6)  
*Sec. 2.*  
Directors,  
how paid.

§ 27. It shall be the duty of the cashier of the Bank of the State of Alabama and its Branches, to furnish the general assembly, at the commencement of its next session, or as soon thereafter as practicable, and annually thereafter, with a full and complete statement of the liabilities of the president and directors of the bank and their securities; and the indebtedness of each and every member of the general assembly, with their securities, together with a tabular statement of each county, alphabetically arranged, of the indebtedness of each and every individual dealing with the bank, and their securities, and by whom recommended.

1839—(5)  
*Sec. 1.*  
Cashiers to  
furnish general  
assembly a statement  
of liabilities of its  
members, of presidents  
and directors, and all  
others.

§ 28. Should any cashier fail to make such return he shall be dismissed from office, and be incapable of holding any office in the state bank or any of its branches.

*Ib. Sec. 2.*  
Cashier dismissed, if he  
fail.



1839—(6)

Sec. 2.  
Business paper due in 120 days may be discounted.

Proviso.

§ 29. The Bank of the State of Alabama, and each of its branches, may discount business paper, not having more than one hundred and twenty days to run, whether it be offered by persons who have taken the extension or not: *Provided, nevertheless*, That if the person or persons, who may offer any business paper for discount, shall have taken the extension, it shall be the duty of the several boards of directors of the said banks, to appropriate the proceeds of the note or notes, so discounted, to the payment of his extended debt.

*Ib. Sec. 3.*  
President and cashier of state bank and branches to settle with attorney thrice a year. If attorney fail to pay over in ten days, to be discharged.

§ 30. It shall be the duty of the president and cashier of the state bank, and each of the branch banks, to settle with the attorney or attorneys of their respective banks, at least three times in each year, and in case of neglect, or refusal, on the part of any attorney or attorneys to pay over to the proper bank any money or moneys, by him or them collected, for the space of ten days after a settlement shall have been made with him or them, by the president and cashier as aforesaid, he or they shall be discharged from the employment of the bank; and it shall be the duty of the president of the bank or branch banks, as the case may be, to sue for and collect the same by summary remedy, as in other cases under the charter of said banks.

*Ib. Sec. 6.*  
President or director under protest 10 days, to forfeit seat.

§ 31. If any president or director shall, in future, suffer his name, either as payer, or discounter, or endorser, upon any note or bill, to remain under protest for the space of ten days, the seat of such president or director shall, forthwith, become vacated and the board shall, as in other cases, proceed to fill such vacancies.

*Ib. Sec. 7.*  
President and directors exempt from juries, &c.

§ 32. The president and directors of the state bank, and the branches thereof, shall be exempt from working on the roads and serving on juries.

*Ib. Sec. 8.*  
No corporation to tax state bank or branches.

§ 33. It shall not be lawful for any corporation, to impose any tax upon the Bank of the State of Alabama, or any of the branches thereof.

*Ib. Sec. 1.*  
Officers to receive salary only.

§ 34. It shall not be lawful for any cashier, clerk, or teller, to receive for his salary more than is now fixed by law.

*Ib. Sec. 2.*  
President or director, voting more, to forfeit seat.

§ 35. If any president or director of the state bank, or any branch thereof, shall vote or award a further sum than is now declared by law, such act shall be void, and said president or director shall forfeit his seat.

*Ib. Sec. 1.*  
Bank officers re-elected to give new bond and security.

§ 36. It shall be the duty of all officers of the Bank of the State of Alabama, and its branches, who may be re-elected to any office in said bank or branches, to enter into new bond, with good and sufficient security, to be approved of, as now prescribed by law in case of their first election; and no bond, taken from any of said officers, shall be held as valid, for a longer term of time than twelve calendar months from the date thereof: *Provided*, That nothing herein contained shall discharge the security from any liabilities, which he had before that time incurred.

Proviso.

1840—(6)

Sec. 1.  
State bank and branches to sue all parties liable on notes and bills, jointly.

§ 37. Whenever suit shall be commenced by the Bank of the State of Alabama, or any of the branches thereof, on any bill of exchange or promissory note, it shall be the duty of the attorney, to include in the writ, or notice, the names of all the parties, liable on the bill or note, and when the parties to any bill, or note, reside in more counties than one, duplicate writs, or notices, may be issued, to the counties in which they reside.

*Ib. Sec. 2.*  
If no defence be made, one judgment to be rendered against all.

§ 38. If no defence is interposed to such suit, it shall be the duty of the court, to render one judgment against all the parties, who are legally before the court, and against whom a recovery may be had: *Provided, however*, That if the acceptor of a bill of exchange is served with process, a several judgment shall be rendered against him, in all



cases, where he is liable for a different sum, than the other parties to the bill; *And provided, further*, That it shall be the duty of the clerk of the court, to endorse upon the execution which party is drawer, first, second, third, or other endorser, and that the moneys shall be collected out of the party first liable. [a1837--(3)  
Sec. 1.]

§ 39. If any defence is made to such suit, and the plaintiff, or either of the several parties to the bill or note, shall demand a severance, it shall be the duty of the court to award the same, and the suit shall proceed to judgment, as if the parties had been severally sued. Ib. Sec. 3.  
Severance to be allowed, if demanded.

§ 40. If several suits shall be commenced, contrary to the provisions of this act, it shall be the duty of the court to consolidate the same, on the motion of the defendants, and to compel the attorney, issuing the writ or notice, to pay the costs occasioned thereby, by process of attachment for contempt: *Provided*, That nothing, herein contained, shall preclude the plaintiff from discontinuing the suit against one or more of the defendants, in cases now allowed by law, or from issuing other process against such parties as shall not be prosecuted to judgment. Ib. Sec. 4.  
If several suits be brought, to be consolidated and attorney to pay costs.  
Proviso.

§ 41. It shall not be lawful for any member of the general assembly of this state, to become endorser, or acceptor, on any bill, negotiable at the Bank of the State of Alabama, or any of the branch banks thereof, unless on his own paper and for his own benefit. 1840--(7)  
Sec. 1.  
Member of general assembly not to be endorser or acceptor, &c.

§ 42. No member of the general assembly shall be security or endorser, except as prescribed in the first section, on any note discounted by the said state bank, or any of the branches thereof. Ib. Sec. 2.  
Not to be security or endorser on any note discounted in bank.  
1837--(4)

§ 43. The governor, comptroller of public accounts, state treasurer, and president of the Bank of the State of Alabama, shall, as early as convenient, cause to be issued, state bonds to the amount of two millions five hundred thousand dollars, the amount to be expressed in sterling money, in sums not exceeding one thousand dollars, payable and redeemable twenty years from the date, or at any time thereafter, at the pleasure of the state, (the date to be left blank and filled up when negotiated,) and to draw an annual rate of interest of five per centum, payable semi-annually, and both the interest and principal of said bonds shall be payable at such place or places, as the person or persons herein empowered to sell said bonds shall designate. Sec. 1.  
State bonds to be issued.

§ 44. The president and directors of the Bank of the State of Alabama and its several branches, shall, together, appoint a suitable agent, who shall, as soon as the same can be done, at or above par, sell said bonds in the United States or Europe; the proceeds of which when sold, shall be deposited in the said bank and branch banks, in gold or silver, in the following proportions, to wit: five hundred thousand dollars thereof shall be placed at the disposal of the Bank of the State of Alabama; five hundred thousand dollars at the disposal of the Branch of the Bank of the State of Alabama, at Mobile; five hundred thousand dollars at the disposal of the Branch of the Bank of the State of Alabama, at Montgomery; five hundred thousand dollars at the disposal of the Branch of the Bank of the State of Alabama, at Decatur; and, five hundred thousand dollars at the disposal of the Branch of the Bank of the State of Alabama, at Huntsville, in aid of the capital of the said bank and its several branches, and to be used by them, respectively, as may best comport with their interest. Ib. Sec. 2.  
Agent to be appointed to sell bonds.

§ 45. The faith, credit, and resources of the state of Alabama, are hereby solemnly pledged for the payment of the interest and pledged. Ib. Sec. 3.  
Public faith pledged.



principal of said bonds, issued in pursuance of the first section of this act.

1841—(3)  
Sec. 1.  
Unknown,  
bad, and  
doubtful  
debts may be  
compromised.

§ 46. The president and directors of the Bank of the State of Alabama, and of each of its branches, respectively, are hereby authorized and empowered to settle and adjust, from time to time, the unknown, bad, and doubtful debts owing to said banks, as to them shall seem best, having in view the best interest of said banks, the time of the maturity of their respective liabilities, and the ability of the debtors to pay said banks.

1841—(4)  
Sec. 1.  
Notes, bills,  
and bonds,  
payable to  
cashier, may  
be collected  
in name of  
bank.

§ 47. All the notes, bills, bonds, or other evidences of debt, held by the state bank or branch banks, payable to the cashier, or the person who has filled the office of cashier of said bank or branch banks, may be sued, and collected in the name of the several banks, in the same manner, as if they had been made payable directly to the said bank or branch banks, by which the paper has been taken or discounted.

*Ib.* Sec. 2.  
No judgment  
in such cases  
shall be re-  
versed.

§ 48. No notice, writ, declaration, or judgment, which has been issued, filed, or rendered on such papers, shall be abated, set aside, or reversed, on account of the want of assignment, transfer or endorsement of said paper, by the officer or person acting as cashier, to whom it was so made payable. But the legal title to such paper, for all purposes of suit or collection, shall be deemed to have been in said bank or branch bank by whom the paper was discounted.

1841—(5)  
Sec. 1.  
Same provi-  
sions extend-  
ed to Bank of  
Mobile.  
*a* See preced-  
ing act.  
Preamble.

§ 49. The provisions of an act entitled "An Act to amend the charters of the Bank of the State of Alabama, and the several Branch Banks, in the mode of collecting their debts, and for other purposes," approved 4th December, 1841, are hereby extended to the Bank of Mobile.

WHEREAS, the Bank of the State of Alabama, and its several branches, have recently suspended specie payments; and whereas, it is believed, said suspension has been produced by causes beyond the control of the president and directors of said banks, in the exercise of ordinary prudence and caution:

1837—(5)  
Sec. 1.  
Suspension  
of specie  
payments  
approved.

§ 50. *Be it therefore enacted, &c.* That said suspension is hereby approved and sanctioned, and that any and every provision of law now in force, requiring or authorizing proceedings against such banks, with a view to the forfeiture of their charters, or by which forfeitures and penalties have been incurred by them, are hereby declared inoperative for those purposes; and that the said charters remain in full force and effect, notwithstanding such suspension: *Provided*, That the bills, notes, and obligations of said banks, shall be receivable as heretofore, at the treasury of this state, and of the several counties, in payment of fines and forfeitures accruing, notwithstanding such suspension.

*Ib.* Sec. 2.  
Debts due  
the banks  
divided into  
three instal-  
ments.

§ 51. All debts, now due to said banks, or which may be running to maturity in the same, either by bills of exchange, or promissory notes, or judgments, shall be divided into three annual instalments, to wit: one of twenty-five per cent., to become payable during the months of March, April, May, or June next; one of thirty-seven and a half per cent., to become due and payable during the months of March, April, May, or June, in the year one thousand eight hundred and thirty-nine; and one for thirty-seven and a half per cent., to become due and payable during the months of March, April, May, or June, in the year one thousand eight hundred and forty; and the interest, calculated at eight per cent. upon the whole debt up to the time when each instalment shall become due, or each instalment shall be paid in the same manner of each and every instalment: *Provided*, That every debtor of the bank, obtaining such extension

Interest.

Proviso.



to the amount of two thousand dollars, shall be prevented from obtaining any loan on accommodation notes, until the whole of said debt shall be discharged; and any person, having his debt, for a less sum than two thousand dollars, extended under the provisions of this section, shall be allowed to apply for accommodation equal to the difference between his debt and two thousand dollars; *And provided*, That in all cases of an extension, it shall be the duty of the directors of said banks, to take a new note, with a good personal security, by way of mortgage or deed of trust, upon real or personal property, or both, as they may think best, which security may be changed, renewed or increased, if required by any of said banks, once a year, or oftener, if necessary, so as to secure the ultimate and punctual payment of said debt; *And provided, further*, That the debt due to said banks, or which may be running to maturity in said banks, upon foreign bills of exchange, (always excepting bills of exchange upon New Orleans,) shall not fall within any of the before mentioned provisions of this section; but where such bills may have been, or shall be protested, the said banks are hereby authorized and empowered to make such arrangements with the parties thereto, or afford such extension, and take such security, as will best comport with the interest and welfare of said banks; and the said banks are hereby further authorized and empowered to make any additional rules and regulations, in relation to the debts first provided for in this section, not herein contained.

Security.

Bills of exchange.

Banks authorized to make additional rules.

§ 52. The recent suspension of specie payments by the Bank of Mobile, and the Planters' and Merchants' Bank of Mobile, is hereby approved and sanctioned, until the fifteenth day of June, one thousand eight hundred and forty: *Provided*, Said banks comply with all the provisions of this act, and with such other acts or parts of acts, which may be passed at the present session of the legislature, which relates to debtors to the Bank of the State of Alabama, and its several branches, and such other acts or parts of acts, as may be passed at the present session of the legislature, in relation to their charter; *And provided, also*, Should the condition of the country enable the Bank of the State of Alabama and its several branches to resume specie payments at an earlier day than the fifteenth day of June, one thousand eight hundred and forty, and six months' notice being given by the president of the same, setting forth the intention of said bank and its branches so to resume specie payments, on a certain day therein specified, then, and in that case, the Bank of Mobile, and the Planters' and Merchants' Bank are hereby required in like manner to resume the payment of specie, on the day set apart in said notice. And upon the failure or refusal of either of the said banks to comply with the provisions of this act, and to resume the payment of specie as aforesaid, the charter of the bank, so failing or refusing, shall be, and the same is hereby declared, forfeited, and shall cease to exist for any other purposes, except in winding up its affairs.

*Id. Sec. 3.*  
Suspension by Planters' and Merchants' Bank, and Bank of Mobile, approved.  
*Proviso.*

Banks to resume specie payment.

Penalty for failing to resume specie payment.

§ 53. The said Bank of Mobile shall withdraw from circulation, as soon as it resumes specie payments, all its notes under the denomination of five dollars; and that it shall not thereafter execute, emit, or circulate, any note, bill, or other obligation of its own, of a less denomination than five dollars.

*Id. Sec. 4.*  
Small notes to be withdrawn from circulation.

§ 54. Each of said individual banks shall file in the executive office, within six months from the passage of this act, written evidence, satisfactory to the governor, of the approval and acceptance, by a majority of the stockholders of said banks, respectively, of this act, as a part of their several charters, so far as applicable to them.

*Id. Sec. 5.*  
Banks to file consent.



*Ib. Sec. 6.*  
Penalty for  
failure to file  
consent.

§ 55. If either of said individual banks shall fail to file consent as aforesaid, it shall be the duty of the governor, to cause a *quo warranto* to be instituted against the bank so failing; and upon its being judicially ascertained, that such bank has, at any time previous to the passage of this act, suspended specie payment as aforesaid, the court, having jurisdiction of the case, shall adjudge the charter of said bank, forfeited, and shall enjoin its further exercise of banking privileges under its charter, except so far as may be necessary to wind up the affairs of said institution.

*Ib. Sec. 7.*  
Stockholders  
to pay an't  
due on sub-  
scriptions.

§ 56. The stockholders of said banks shall, within twelve months

Proviso.

from the date of this act, pay the amount that shall be due upon their subscriptions, or the same shall be forfeited, with all partial payments thereon, and the same shall be incorporated with the funds of the bank: *Provided*, That each stockholder may relinquish any part of his stock, by applying all partial payments to the completion of payments on that part of the same that shall not be relinquished.

*Ib. Sec. 8.*  
Banks au-  
thorized to  
appoint  
agents.

§ 57. The president and directors of the Bank of the State of Alabama and its several branches, are hereby authorized to appoint such agents as they may deem necessary, to enable them to comply with the provisions of the second section of this act, and to pay a reasonable compensation for the services of the same.

*Ib. Sec. 9.*  
Damages au-  
thorized to  
be remitted  
on domestic  
bills of ex-  
change.

§ 58. The president and directors of the Bank of the State of Alabama and its several branches, are hereby authorized to remit the damages on all bills of exchange drawn by citizens of this state in good faith, whether payable in this state or New Orleans, which have been purchased by either of the aforesaid banks, as well on bills already protested since the first day of December last, and remaining unpaid, as on those running to maturity: *Provided*, The parties pay the principal, cost, and interest, or secure the debt satisfactorily to the board of directors, and pay the same in instalments, agreeable to the second section of this act; and all those having paid damages on any such bills, purchased and protested as aforesaid, shall have the same refunded; or, if indebted to the bank, credit shall be given on his or her, or their note or bill.

Proviso.

Damages to  
be refunded.

*Ib. Sec. 10.*  
Damages re-  
mitted on  
foreign bills  
of exchange.

§ 59. The president and board of directors of the Bank of the State of Alabama, and its several branches, shall have power to remit damages on foreign bills of exchange, purchased by them since the first day of January last, if they are satisfied that the bills have been drawn in good faith, and have been protested from causes beyond the control of the parties thereto: *Provided*, The parties pay the principal, interest, and costs; and in the event of their inability to do so in money, then, and in that case, the several boards of directors shall have power to grant such extension of time as they, in their judgment, may think proper, taking good and satisfactory security for the punctual and ultimate payment of the debt so extended.

Proviso.

*Ib. Sec. 11.*  
Banks may  
continue to  
purchase  
bills, &c.

§ 60. Nothing in this act shall be so construed, as to prohibit the president and directors from purchasing bills of exchange, and, in all cases, the banks, in their future loans, shall give a preference to those applicants who have previously had no accommodation, or have paid their dues to the bank.

*Ib. Sec. 12.*  
Banks to  
give notice.

§ 61. It shall be the duty of the board of directors of the several banks, to give notice in one or more newspapers, published in the place where the bank is located, that those indebted may avail themselves of the benefit of this act, if they should think proper so to do; and failing to do so in a reasonable time, the provisions of this act shall not be so construed as to prevent the several banks from collecting their debts, as authorized by their respective charters:



*Provided*, That nothing, herein contained, shall be so construed, Proviso. as to divest the president and directors of the said several boards, of power to remit damages in all cases of doubtful or suspended debts, when, in their opinion, the same may be expedient or proper, and, at the same time, granting extension to all such debts, upon satisfactory security being given.

§ 62. Where stock shall have been created under the acts of any Ib. Sec. 14. Stock here tofore created to be sold. previous legislature, and the same shall not have been disposed of, for the purpose of enlarging the capitals of any of the banks of the state, the president and directors of said institution, or other agents, heretofore appointed, shall have the power to sell the same: *Pro-* Interest not to exceed six per cent. *vided*, That a greater rate of interest shall not be incurred by such sale, than six per cent. per annum; and, upon any such sale, one fourth of the proceeds shall be vested in specie, and the same shall be deposited in the vaults of such banks.

§ 63. It shall be the duty of the governor, comptroller of public Ib. Sec. 15. Governor, &c. to issue state bonds. accounts, state treasurer and the president of the bank of the state, as early as practicable, to cause to be issued, in the usual form, five millions of dollars in state bonds, in sums of five hundred dollars, or one thousand dollars, leaving the date thereof blank, to be filled when disposed of, which bonds shall bear an interest of six per cent. per annum, and be due and redeemable at the pleasure of the state, at any time after two, four and six years, in equal proportions of each, and the interest shall be payable annually, in New York, or such other place or places as the parties herein empowered to sell said bonds may agree upon.

§ 64. The said bonds shall be deposited in the several banks of Ib. Sec. 16. Bonds to be deposited. this state, in the following proportion, viz: The sum of one million of dollars shall be deposited in the Bank of the State of Alabama, at Tuscaloosa; the sum of one million shall be deposited in the Branch of the Bank of the State of Alabama, at Huntsville; the sum of one million in the Branch Bank, at Decatur; the sum of one million in the Branch Bank, at Mobile; and the sum of one million in the Branch Bank, at Montgomery.

§ 65. The president and directors of the said bank and branch Ib. Sec. 17. Banks to issue bonds, banks, are hereby authorized, whenever the same can be done, at or above par, to sell said bonds so deposited, either in the United States or Europe, the one half to be paid in specie, and be deposited in the banks, in aid of their capital, and the other half sold for funds equivalent to specie, and be deposited in solvent banks in the city of New York, as a specie fund, subject to the drafts of such bank, for whose benefit such bonds were sold, in aid of their banking capital, also: *Provided*, That if the said bonds shall not be sold in eighteen Proviso. months, and the issues shall be made thereon, it shall be lawful for the said bank to sell the same at their par value, or at a higher rate, if possible, for the purpose of redeeming its circulation, and for that purpose to appoint an agent who shall therefor receive suitable compensation.

§ 66. The president and directors of said bank and branch banks, Ib. Sec. 18. Banks to issue bills. respectively, are hereby authorized to issue and keep in circulation the bills or notes of said bank and branch banks, to an amount not exceeding the amount of capital stock of said bank and branches, including the bonds hereby authorized to be issued.

§ 67. In the apportionment of loans under this act, regard shall Ib. Sec. 19. Loans to be made according to population. be had to the population of the several counties, as shall be determined by the votes at the next general election: *Provided*, That if the amount allotted to any one county shall not be applied for by



citizens of such county, within a reasonable time, the excess, over and above the amount of such application, shall be appropriated to accommodate the applications from those counties, whose distributive shares may be insufficient to supply the amount applied for from said counties.

*Ib. Sec. 20.*  
Banks to discount transaction notes.

§ 68. The president and directors of said bank and branches are hereby authorized to discount business or transaction notes, in payment of all debts now due, or which may fall due before the first day of March next, to said banks, when, in their judgment, the same may be for the interest of said banks: *Provided*, That the parties indebted upon said business paper, or transaction notes, shall be entitled to the privileges granted to debtors, in the second section of this act, upon complying with the provisions therein contained.

*Ib. Sec. 21.*  
Loans not to exceed \$2000

§ 69. The president and directors of the said bank, and branch banks, are hereby authorized and required, to lend the amount to be issued on the bonds, heretofore provided for in this act, to individuals, in sums not exceeding two thousand dollars, to any one person, at an interest of seven per cent. per annum, upon the parties so applying, giving notes payable in one, two and three years, with at least two good and sufficient securities, and deed of trust upon real estate or slaves, whenever the same may be required by the president and directors of said banks, respectively: *Provided*, That the discounts hereby authorized, shall not be granted to any person or persons, who may have availed themselves of the provisions of extension, provided for in the second section of this act, and whose debt to said bank or branch banks shall not have been paid in full, at the time of said application.

*Ib. Sec. 22.*  
Redemption of bonds.

§ 70. The annual payments by the borrowers, under the ——— section of this act, shall be applied by the president and directors of the respective banks, to the redemption of the bonds herein provided to be issued; which said bonds, when so redeemed, shall be cancelled and returned to the president of the Bank of the State of Alabama, and the said president and directors of the said bank and branch banks are hereby respectively required, to make full provision for the payment of the annual interest on said bonds, at the time the same may become due, and after the redemption of the said bonds, by the application of the payments as aforesaid, or after the same shall be applied to the redemption of the bills of the bank aforesaid, they shall no longer form the basis of circulation, and the said banks shall regulate their issues accordingly.

*Ib. Sec. 23.*  
Faith of the state pledged

§ 71. The faith and credit of this state, together with the moneys, debts and liabilities, arising from the loans of the ——— section of this act, are hereby pledged, for the increased issues of the said bank and branch banks, and for the redemption of said bonds.

*Ib. Sec. 24.*  
Banks may demand additional security.

§ 72. Upon all loans made under this act, or upon any debt that may be suspended, the different banks shall have the right, whenever the interest of said banks may require it, to demand new or additional security, and if any debtor shall fail or refuse to give the same, they may proceed to collect the whole of such loan.

*Ib. Sec. 25.*  
Items of expense.

§ 73. It shall be the duty of the president and directors, annually, in making up statements of the expense account, to furnish the items of the expense incurred at the above banks, respectively, subject to the inspection of the general assembly.

*Ib. Sec. 26.*  
Mortgage to contain power of sale.

§ 74. Every mortgage, taken under this act, shall contain a power of sale; and if any person, who shall borrow any sum or sums under this act, shall fail to make payment of any instalment thereon, when it shall become due, the whole of the sum or sums so borrowed,



or the entire balance remaining unpaid, shall become due, and the president of the proper bank shall at once proceed to collect the same.

§ 75. If any person shall become indebted to any of said institutions by bill, bond, note or other contract for the payment of money, and shall delay payment thereof, the said banks may sue for and collect the same by summary remedy, as in other cases under the charter of said banks. *Ib. Sec. 27. Banks to collect by summary remedy.*

§ 76. It shall be lawful for the president and directors of the Bank of the State of Alabama, and the presidents and directors of the branch banks at Mobile, Decatur, Huntsville and Montgomery, to adopt such measures in the collection of debts due or coming due said banks, and each of them, on the extended debt, seven per cent. loan, together with all notes or bills of exchange they have in suit, or in execution, or upon any other obligation, as to collect or call in a sum not exceeding twenty per cent. per annum, and interest, until the legislature shall otherwise direct, upon the amount now due or coming due, of any of said debts, extended debt, seven per cent. loan, notes or bills in suit or execution, or other obligation, which collections shall be so made to the extent of the said amount of twenty per cent. per annum and interest, until the legislature shall otherwise direct, on the amount now due or coming due, as to conform to the safety of the said several banks, and to the ability of the debtors to discharge the same: *Provided*, That in all cases, the said debtors shall give ample security, as is now provided for by law; *And provided, further*, That if any debtor, applying for the benefit of this act, shall fail to furnish the security required, he, she, or they, shall be considered as waiving the provisions of this act, and be proceeded against as is now required by law; *Provided, further*, That this section shall not be so construed, as to embrace bills of exchange, running to maturity and predicated on the shipment of cotton, or upon business or transaction paper, except such business paper as has been substituted for the extended debt, or seven per cent. loan; *Provided, further*, That the bills of exchange, purchased in the liquidation of the debt due the Mobile branch bank by the Decatur bank, shall not be embraced in this section; *Provided, further*, That nothing contained in this act shall be so construed, as to prevent the president and directors of any one of the banks from receiving more than twenty per cent. from any person indebted to their respective banks, when the person or persons, so indebted, may desire to pay a larger amount on his or her indebtedness. *1840—(8) Sec. 1. State bank and branches may only collect 20 per ct. per an. on extended debt and 7 per ct. loan. Proviso. Ample security to be given, &c.*

§ 77. The Bank of the State of Alabama, and the branches of said bank at Montgomery and Huntsville, are hereby authorized to issue, each, the sum of five hundred thousand dollars in post notes not having a longer time than twelve months to run, and the branches of said state bank, at Mobile and Decatur, are required to issue a like sum of five hundred thousand dollars, each in their own paper. *Ib. Sec. 3. State bank and branches may issue, each, \$500,000 in post notes.*

§ 78. Any person indebted to the banks aforesaid, shall have the privilege of paying the same at any time before the same shall have run to maturity, and it shall be the duty of the cashier of the bank to which application may be made, to receive the money for the same, computing the interest on the said note only from the date of the same until the payment is made. *1837—(6) Sec. 1. Debtors may pay before maturity, deducting interest.*

§ 79. It shall be the duty of the president of the Bank of the State of Alabama, or any branch thereof, before the sale of any property mortgaged or conveyed by deed of trust to said bank or branch bank, under the twenty-first section of "An Act to extend the time of *1837—(7) Sec. 1. President of state bank or any branch, to give 30*



days' notice of time and place of sale of mortgaged property.

When no adequate bid, sale may be postponed.

1839—(8)  
Sec. 1.  
Interest not to be required in advance on certain loans.

*Ib.* Sec. 2.  
Banks to credit for interest heretofore paid.

1841—(7)  
Sec. 1.  
Suspension of specie payments legalized.  
1843—(2)  
Sec. 1.  
No allowance to presidents or directors for extra services.

*Ib.* Sec. 2.  
Bank attorney to prepare notices, copies of motion, &c.

*Ib.* Sec. 3.  
For what circuit and county court clerks may charge, and how much.

*Ib.* Sec. 4.  
Each bank may appoint agent to serve notices, subpoenas, &c., who shall give bond.

indebtedness to the Bank of the State of Alabama and its branches, and legalizing the suspension of specie payments of the same, and for other purposes," approved June 30th, 1837, to give thirty days' notice previous to any sale of such property, particularly describing the property to be sold, the time and place of such sale, by advertisement at the county site of the county in which said property is situated, or where the debtor resides. And the president and directors aforesaid, shall have the power, when there has been no bid for said property, or when the amount bid is grossly inadequate to the value of said property, to cause the sale to be postponed from time to time for the want of bidders, as in their discretion shall be for the best interest of said bank.

§ 80. Nothing contained in an act passed the thirtieth day of June, eighteen hundred and thirty-seven, entitled, "An Act to extend the time of indebtedness to the Bank of the State of Alabama and its several branches, and legalizing the suspension of specie payments of the same, and for other purposes," shall be so construed as to authorize the state bank or either of the branches thereof, to require the payment of interest in advance on the loans made pursuant to the twenty-first section of the above recited act.

§ 81. In all cases in which the Bank of the State of Alabama or either of its branches, may have required the payment of the interest in advance, upon loans made under the provisions of the above recited act, it shall be the duty of the said bank and branch bank to credit the borrower with the interest, at the rate of seven per centum per annum, upon the interest so paid in advance.

§ 82. The suspension of specie payments by the Bank of the State of Alabama and its several branches, is hereby sanctioned, until otherwise provided by law.

§ 83. It shall not be lawful for presidents or directors of the bank or branch banks, aforesaid, to receive or take any sum from the said banks, by way of allowance or payment for special or extra services; nor shall they, or either of them, make any contract with the bank, of any kind or description whatsoever, for employment, or for the sale or purchase of any property to or from the same.

§ 84. In all suits, commenced by motion, by the bank, or any of the branch banks aforesaid, the notices and copies shall be prepared by the attorney of the bank, or under his direction, by the clerks of the bank, and the docket of cases shall also be prepared by them, and no fee or compensation shall be allowed for such service.

§ 85. It shall not be lawful for the clerks of the circuit or county courts, in such cases, to make any charge, except for the entry of judgment, the issuing of execution, and the final record; for the entry of judgment, the said clerks shall have fifty cents; for all the services connected with the issuing and return of any execution, fifty cents; and for the final record, twenty-five cents; and upon each *alias* execution, twenty-five cents; and no fee or other compensation shall be demanded of the bank, until after the return of execution, returned "no property found," in any case in which the said banks shall recover a judgment.

§ 86. Each of the banks aforesaid may appoint an agent, who shall have the power to serve notices, subpoenas, attachments, executions and other process, and have the same powers, and shall be entitled to the same fees, and shall observe the same regulations, as the existing laws prescribe to sheriffs; and said banks shall require a bond of such officer, with sufficient securities, in the penal sum of not less than ten thousand dollars, faithfully to perform all the duties of his



office; which bond may be increased, if necessary; and he shall also be required to subscribe an oath, faithfully and honestly to demean himself in his said office.

§ 87. The said banks, and either of them, may commence suits in the courts of the county of the residence of the defendants, by motion in the same manner as they may be commenced in the circuit or county courts of the county in which the bank is situated.

§ 88. The Branch of the Bank of the State of Alabama, at Decatur, is authorized to pay the interest on the funds of the sixteenth sections paid into the said bank, and to lend the moneys that may hereafter be paid according to the existing laws; and in the event of the failure of moneys in the said bank to pay the interest, the branch bank at Huntsville shall be authorized to lend the amount necessary, to said branch bank at Decatur, to perform this duty.

§ 89. In all cases in which it may be practicable, the said bank and branch banks may employ some competent attorney at law in each county in which any portion of the bad and doubtful debts, as classed at the present session of the general assembly, may be due, and to place in said attorney's hands such part of said bad and doubtful debts as may be deemed expedient; and such attorney shall receive such compensation for his services, as a majority of the president and board of directors shall think proper: and where it may be impracticable to procure a competent attorney in any such county, one may be employed in the county nearest the same; and the books, containing a list of the debtors and amount of indebtedness to said banks, which have been submitted to the members of the general assembly at the present session, shall, as early as convenient, be returned to said several branch banks, respectively.

§ 90. The bank attorneys for the state bank, and for the several branch banks in this state, shall hereafter receive as compensation for their services, a tax fee upon all judgments which they may obtain in favor of their respective banks, as follows, to wit: upon all judgments under five hundred dollars, they shall receive a tax fee of four dollars; upon all judgments over five hundred and under one thousand dollars, six dollars; and upon all judgments over one thousand dollars, seven dollars; which fees shall be taxed in the bill of costs, and collected and paid over as other costs.

§ 91. The tax fees authorized in this act shall be in lieu of the salaries heretofore allowed to the bank attorneys, and the said bank attorneys shall receive no other compensation whatever for their services, than the fees provided for in the first section of this act: *Provided*, That said fee in no case be paid by the bank, though the defendant be insolvent.

§ 92. The attorney of the bank shall be required to obtain a certificate of the judges of the several courts, which are held in the county in which the bank is located, that he has performed his duty as attorney, in the litigated cases pending in the said courts, to which the bank is a party, and in case he fails to procure this certificate, he shall not be entitled to receive the fees specified in the first section, to a greater amount than the sum of one thousand dollars, and all the fees beyond that sum shall be collected for the bank: *Provided*, That if the tax fees, therein specified, shall not amount to the sum of one thousand dollars on solvent defendants, an allowance shall be made to the bank attorney, so that his compensation shall not be less than one thousand dollars.

§ 93. The tax fee of two dollars, on each judgment, rendered in all

*Ib. Sec. 5.*  
Banks may  
sue in any  
county

where de-  
fendant re-  
sides.

*Ib. Sec. 6.*  
Branch at

Decatur may  
pay interest  
on sixteenth  
section  
funds.

May borrow  
of Huntsville  
branch, if  
necessary.

*Ib. Sec. 7.*  
Banks may  
employ at-  
torney in  
each county  
to collect bad  
and doubtful  
debts.

1843—(3)

*Sec. 1.*  
Tax fees al-  
lowed bank  
attorneys.

*Ib. Sec. 2.*

Tax fees to  
be in lieu of  
salaries.

*Ib. Sec. 3.*

Bank attor-  
ney to get  
certificate of  
judges that  
he has done  
his duty.  
Penalty for  
failure.

*Proviso.*



Sec. 1.  
Tax fee on  
each judg-  
ment *vs.*  
bank debt-  
ors, goes to  
county of de-  
fendant.  
*Ib.* Sec. 2.  
Duty of  
clerks in re-  
lation to tax  
fees.  
1843—(5)  
Sec. 1.  
In suits *vs.*  
bank, attach-  
ment or gar-  
nishment  
may not be  
had *vs.* bank  
debtor.  
1843—(60)  
Sec. 1.  
State bank  
and branches  
to exchange  
small notes  
for \$100 or  
more of their  
own issue.

cases of debt due the several banks in this state, shall belong to the county treasury, where the defendant may reside.

§ 94. It shall be the duty of the clerks of the circuit and county courts in the several counties in this state, to keep an exact account of all tax fees on suits at the instance of the banks, and pay over the same to the county treasurer of the different counties, where the defendants reside, or his order, once in every twelve months.

§ 95. In no case of any suit instituted by any person or persons, or any corporate body, against the Bank of the State of Alabama, or any branch bank in this state, shall the process by attachment, or garnishment, against any debtor of the said bank, or any branch thereof, be issued in favor of any such suitor.

§ 96. The Bank of the State of Alabama and its several branches are hereby authorized and required, whenever any person shall present to the said bank, or either of its branches, any note of the said bank or either of its branches, of the amount of one hundred dollars or more, to give to such person, in exchange for the same, notes of the said bank, or either of its branches, of smaller amount.

#### BRANCH BANKS.—THEIR LIQUIDATION.

*Acts consoli-  
dated.*  
1843—(6) (7)  
(8) (9)

What former  
powers of  
the Branch  
Banks are re-  
voked.

What con-  
tinued, and  
how restrict-  
ed.

§ 1. *Be it enacted, &c.* That the powers heretofore vested in the presidents and directors of the several Branches of the Bank of the State of Alabama, at Mobile, Montgomery, Huntsville, and Decatur, to deal in bills of exchange, to discount notes,<sup>1</sup> and to receive money on deposit, are hereby revoked; and the said branch banks, respectively, shall be continued in operation solely for the security and collection of their debts, and the full settlement and liquidation of their affairs.

§ 2. The powers heretofore conferred upon the presidents and directors of the said branch banks, respectively, to make settlements and renew notes, are continued: *Provided*, That no real or personal estate shall be taken in payment or settlement of any debt due any one of the said branch banks; and no chose in action shall be taken in settlement or renewal of any debt due the branches at Mobile and Huntsville, respectively, unless it shall contain a promise of payment directly to the branch to which the debt is due, or shall consist of negotiable securities to be negotiated before maturity at the same; and no chose in action shall be taken in renewal of any debt due the branches at Montgomery and Decatur, respectively, whereby any party to the debt is discharged; and no proposition for renewal or settlement, made to any one of the four branches, shall be operative, without the concurrence of its president and all of its directors, and choses in action shall only be received by them as collateral security.<sup>2</sup>

<sup>1</sup>In sec. 1, of "An Act for the regulation of the Branch of the Bank of the State of Alabama, at Mobile," and of "An Act to put in liquidation the Branch of the Bank of the State of Alabama, at Huntsville," "*promissory notes*" are specified. See Pamphlet Acts of 1842-3, pp. 11 and 47.

<sup>2</sup>In sec. 2. of the Acts mentioned in the foregoing note, it is said, that '*choses in action shall only be received as collateral security in all cases of renewal, where the original parties are changed.*'



§ 3. The number of directors of each branch shall be reduced to three persons, who shall be elected, at the commencement of each session of the general assembly, for the ensuing year, by a joint vote of both houses, from seven persons to be nominated by the governor; and, if any vacancy occur in any one of said boards of president and directors, during the recess of the general assembly, it shall be the duty of the cashier to notify the governor of the fact, within five days after it has happened, and the governor shall fill the vacancy.

Directors.—  
Their number and mode of election.

Vacancies, how filled.

§ 4. The said directors shall receive the *per diem* compensation now prescribed by law: *Provided*, The compensation allowed to any one director in the Mobile branch, shall not exceed eighteen hundred dollars, that allowed to any one director in the Montgomery or the Decatur branch, shall not exceed thirteen hundred dollars, and that allowed to any one director in the Huntsville branch shall not exceed twelve hundred and fifty dollars; and the president and directors of no one of the said branches shall have power to make any allowance or appropriation for their own benefit, nor shall they, or either of them, be employed in any extra service, on account of the bank of which they or either of them may be president or director; and no claim for extra allowance, by the president and directors, shall have any validity, until ratified by the general assembly.

Compensation of directors.

Not to be employed in any extra service by the bank.

§ 5. The president and directors of each of the said branch banks shall each give bond to the bank, in the sum of twenty thousand dollars, with two or more sufficient securities, for the faithful performance of the duties of his office; and the said bond shall be taken by the judge of the county court of the county in which the branch is situated, and recorded in the office of the clerk of that court, and the original shall be filed with the secretary of state, and a copy of the same, duly certified, shall be admitted as evidence in any court in place of the original.

President and directors to give bond.

Judge of the county court to take bond and clerk to record it.

§ 6. The bills of any of said branch banks shall be receivable, as heretofore, in the payment of debts now due, or which are running to maturity, and in the future renewals or extensions of said debts, in the Bank of the State of Alabama, or any of its branches; and when any of the bills of any branch shall be taken by the Bank of the State of Alabama or any of its branches, the same shall not be re-issued, but the said bank and branches shall stand as creditors of each other, and be entitled to re-payment out of the assets of the branch by which the bills so received were issued, as they may be collected: *Provided*, That, in the case of the Mobile branch, no part of its assets shall be so applied, until its circulation, in the hands of individuals or corporations other than said state bank and branches, shall be reduced to two hundred thousand dollars; and, in case of the branches at Montgomery and Decatur, the assets shall be so applied, after the payment of the debts due their bill-holders and depositors.

Bills of any branch receivable for debts now due or running to maturity, and in renewals or extensions of debts. Said bills not to be re-issued, but bank entitled to re-payment. Proviso.

§ 7. The officers of the branch banks at Huntsville, Montgomery, and Decatur, shall consist of a cashier and two clerks each; the salary of each cashier shall be fifteen hundred dollars per annum, and of each clerk<sup>1</sup> one thousand dollars per annum. The officers of the branch bank at Mobile shall consist of a cashier and three clerks; the salary of the cashier shall be eighteen hundred dollars per an-

Bank officers.

Their compensation.

<sup>1</sup>In sec. 7, of "An Act to put in liquidation the Branch of the Bank of the State of Alabama, at Huntsville," it is said, the salary of a clerk "shall not exceed ten hundred dollars."



num, and that of each clerk shall not exceed twelve hundred and fifty dollars per annum.

Real estate pledged for the payment of the debts of the banks.

§ 8. The real estate now held or which may be acquired by each branch bank in settlement of any debt, is hereby pledged for the payment of the debts due by said branch bank, in equal proportions<sup>1</sup> and the said lands shall be vested in the president and directors of said branch for that purpose.

Real estate to be valued by commissioners appointed by the governor, and sold.

§ 9. Two commissioners, (who do not reside within the vicinity of said real estate,) shall be appointed by the governor for each branch bank, whose duty it shall be to examine and value the said real estate, upon oath, in suitable tracts or parcels, for the purpose of selling the same, which valuation, with a description of said tracts or parcels, shall by them be returned to the secretary of state, to be filed in his office: upon the reception of which, it shall be the duty of the governor, (at such times and places as he, with the advice of the proper board of president and directors, shall deem advisable,) upon giving ninety days' public notice of the time and place, in a newspaper published nearest the location of the real estate to be sold, to offer said lands, lots, or real estate for sale, in such parcels, tracts or lots, to the highest bidder, at public outcry, one fourth for cash, and the residue in one, two and three equal annual instalments, with interest at six per centum per annum thereon, payable in the notes of the Bank of the State of Alabama, or any of its branches.

Minimum price.

§ 10. Three-fourths of the value so fixed upon the said lots, tracts or parcels, shall be the minimum price at which the same shall be set up, which, if not sold, shall be withdrawn from sale.

Purchasers to give notes and receive certificate of purchase.

§ 11. It shall be the duty of the president and directors of any one of the aforesaid branch banks, or their authorized agents, conducting said sale, to take the notes of the purchaser or purchasers of any of the said tracts, parcels or lots so sold, for the residue of the purchase money and interest, as herein before provided for, and to give to him, her or them, a certificate of purchase, certifying the lot, tract or parcel, so purchased, and the price thereof; and shall return the purchase money and notes so received, to the said branch bank, and take the receipt of the cashier therefor, and return said receipt to the office of the secretary of state; and upon full payment being made for any purchase, the president and directors of said branch bank shall make title to the purchaser or purchasers, their heirs or assigns, for the tract so paid out in full: and, if any of said notes are not punctually paid, the governor shall be authorized to declare the contract forfeited, to dispossess the purchaser and re-sell the premises as if no sale had been made; nor shall any part of the money paid be refunded to the purchaser, whenever the governor shall declare the contract to have been forfeited. And the said commissioners shall be allowed a compensation not exceeding three dollars per day, during the time occupied by them in valuing said lands, to be paid them by the cashier of the said branch bank, upon their account of such time, rendered on oath.

On full payment, bank to make title.

Contract may be forfeited.

Compensation of commissioners.

Debtors may pay in bills of State bank or any branch.

§ 12. The debtors of each of the said branch banks shall have the right to pay any debt due to the same in the bills of the Bank of the State of Alabama or either of its branches, and no process or proceedings whatever against the debtor, shall be operative to deprive him of this privilege.

<sup>1</sup> "In equal proportions" is omitted in the act liquidating the Huntsville branch.



§ 13. The president and directors of any one of the branch banks may employ extra agents to transact special business for the same : Banks may employ extra agents. Proviso.  
*Provided*, Said president and directors shall make the contract for compensation before the same is undertaken ; or, if no contract is so made, the rate of compensation shall be fixed by the concurring vote of the president and all the directors of the board, and approved by the general assembly, before payment shall be made.

§ 14. The state bank shall receive the bills of each branch bank, with the word "canceled" written across the face of the same, after they shall have been registered by the branch bank in a book to be kept for that purpose ; also, the blank impressions of the bills and the plates that are now in possession of the said branch banks, respectively, after allowing a sufficient sum for the payment of the current liabilities of the same, and allowing the following sums to be retained for the payment of contingent and other expenses, the sum of twenty thousand dollars, each, by the branches at Mobile and Decatur, the sum of forty thousand dollars by the branch at Montgomery, and the sum of ——— thousand dollars by the branch at Huntsville ; and said bills and blank impressions shall be destroyed by the president and directors of the Bank of the State of Alabama, in the presence of the governor and secretary of state, and the amount destroyed shall, from time to time, be published in one or more papers in the vicinity of the bank. State Bank to receive bills of each branch, after being marked "canceled" and registered. Also blank impressions and the plates. Bills and blank impressions to be destroyed.

§ 15. The Bank of the State of Alabama and the branches thereof shall have quarterly settlements with each other, and the bills of any one of the branch banks, held by any other of them, shall, on such settlements, be delivered, marked "canceled," to the president and directors of the branch which issued them, who shall forward them to the Bank of the State of Alabama, and they shall be registered in a book kept for that purpose, and destroyed in the manner prescribed in the preceding section. State Bank & Branches to have quarterly settlements.

§ 16. When the state bank resumes specie payments on all its issues, it shall in like manner redeem the issues of each of the branch banks. State Bank to redeem notes of its branches.

§ 17. The president and directors of each branch bank shall, during the year one thousand eight hundred and forty-three, proceed to sell to the highest bidder for cash all the personal property held by such branch bank, (except the furniture belonging to the banking-house,) after having given thirty days' notice of the time and place of any such sale, in one or more newspapers published in the town or city where the branch is located, and in one paper published nearest the place of sale : *Provided, however*, No sale shall take place, until the president and directors shall have obtained the assent of the governor thereto ; *And provided, further*, That, at such sale, neither the president, nor any one of the directors, shall become, directly or indirectly, purchasers of any of said property, except it be for the state of Alabama. Personal property of the branch banks to be sold. Provisos.

§ 18. The Branches of the Bank of the State of Alabama at Huntsville and Montgomery, shall pay the interest on the sixteenth section funds, deposited with the said branch banks, respectively ; and shall have power to lend the money hereafter paid on notes, deposited in said banks by the commissioners of the different townships, according to existing laws. Branches at Huntsville & Montgomery shall pay interest on 16th sec. fund.



## BANK OF MOBILE.

1818—(19)  
Capital  
stock.

§ 1. *Be it enacted, &c.*, That a bank shall be established in the town of Mobile, in the Alabama Territory, the capital stock of which shall not exceed five hundred thousand dollars, divided into five thousand shares, of one hundred dollars each.

Superinten-  
dents.

§ 2. Subscriptions towards constituting said bank, shall be opened in the town of Mobile, on the first Monday of January next, under the superintendence of Lewis Judson, Alvan Robishow, Addin Lewis, David W. Crawford, John King, jun., Thomas L. Hallett, Henry Gunnison, Oliver Holman, Henry Stickney, Terry M'Cusker, Benjamin H. Hall, and John Whitehead, or a majority of them, and shall remain open at least twenty days, and until the sum of seventy thousand dollars shall be subscribed.

Payment in  
gold or silver

§ 3. The payments of the said subscriptions shall be made and completed by the subscribers, at the times, and in the manner following, to wit: one-eighth part thereof at the time of subscribing, three-eighth parts thereof, as soon as the bank may be carried into operation, each of which payments shall be made in gold or silver, when the directors shall give notice thereof by advertisement in some newspaper printed in the town of Mobile, at least thirty days previous to the day on which the subscribers shall be required to pay the same, and the remainder in two equal instalments, at sixty and one hundred and twenty days thereafter.

Name.

§ 4. The subscribers to the said bank, their successors and assigns, hereby are created a body corporate and politic, by the name and style of "The President, Directors, and Co. of the Bank of Mobile," and shall so continue, until the first day of January, one thousand eight hundred and thirty-nine, and, by that name, are hereby made able and capable in law, to have, purchase, receive, possess, enjoy, and retain to them and their successors, lands, rents, tenements, hereditaments, goods, chattels, and effects, of whatsoever kind, nature, and quality, to an amount not exceeding in the whole, six hundred and fifty thousand dollars, including the amount of the capital stock aforesaid; and the same to sell, grant, demise, alien or dispose of; to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in any suit, action, matter or thing, depending in any court of law or equity; and also to make, have, and use, a common seal, and the same to break, alter, and renew, at their pleasure; and also, ordain, establish, and put in execution, such by-laws, and ordinances, and regulations, as they shall deem necessary and convenient for the government of the said corporation, not being contrary to the constitution thereof, or the laws of the United States, or of this territory; and generally to do and execute all and singular, the acts, matters, and things, which to them may appear necessary, or which to them it shall or may appertain to do, as incident to bodies corporate, subject, nevertheless, to the rules, regulations, restrictions, limitations, and provisions, hereinafter prescribed and declared.

Seal.

May make  
by-laws.

May elect  
directors.

§ 5. For the management of the affairs of said corporation, there shall be thirteen directors annually elected, at the banking house in Mobile, on the first Monday in January, in each year, by the qualified stockholders of the capital of said bank, and by a plurality of votes then and there actually given, according to the scale of voting hereinafter prescribed; and the directors so duly elected, shall be capable of serving, by virtue of such choice, from the first Monday in



the month of January, in each year, until the end and expiration of the first Monday in the month of January, of the year next ensuing ; the time of each annual election, to be held by the stockholders as aforesaid ; and the board of directors, annually, at the first meeting after their election, in each and every year, shall proceed to elect one of the directors to be president of the corporation, who shall hold said office during the same period for which the directors are elected as aforesaid : *Provided, always,* That the first election of the directors and president of the said bank shall be at the time, and for the period hereafter declared ; *And provided, also,* That in case it should at any time happen, that an election of directors, or an election of the president of the said bank, should not be so made as to take effect on any day, when, in pursuance of this act, they ought to take effect, the said corporation shall not, for that cause, be deemed to be dissolved, but it shall be lawful, at any other time, to hold such election, and the manner of holding the elections, shall be regulated by the laws and ordinances of the said corporation, and until such election be held, the president and directors of said bank, for the time being, shall continue in office ; *And provided, also,* That in case of death, resignation, or removal of the president of the said corporation, or of his absence from this territory for more than six months, the directors shall proceed to elect another president from the directors as aforesaid, and in case of the death, resignation, removal from office, or absence of a director, the vacancy may be supplied by a majority of the board.

May elect  
president.

Proviso.

Vacancy in  
board of pre-  
sident and  
directors,  
how filled.

§ 6. As soon as the sum of seventy thousand dollars shall be subscribed, notice thereof shall be given by the superintendents, in all the newspapers printed in the town of Mobile, and the said superintendents shall, at the same time, and in like manner, notify a time and place in said town of Mobile, at the distance of, at least, fifteen days from the time of such notification, for proceeding to the election of thirteen directors as aforesaid ; and it shall be lawful for such election to be then and there made ; and the persons, who shall be elected as aforesaid, shall be the first directors of the said bank, and shall proceed to elect one of the directors to be president of said bank ; and the directors and president of the said bank, so elected, shall be capable of serving in their respective offices by virtue thereof, until the end and expiration of the first Monday in the month of January next ensuing the said election, and they shall then and thenceforth commence and continue the operations of the said bank at Mobile.

Directors,  
how elected.

§ 7. The directors, for the time being, shall have power to appoint a cashier, and such officers, clerks, and servants under them, as shall be necessary for executing the business of the said corporation, and to allow them such compensation as shall be prescribed, fixed, and determined by the laws, regulations, and ordinances of the same.

Officers,  
how elected.

§ 8. The following rules, regulations, limitations, and provisions, shall form the fundamental articles of the constitution of the said corporation, to wit :

Fundamen-  
tal laws.

1st. The number of votes, to which the stockholders shall be entitled in voting for directors, shall be according to the number of shares he, she, or they hold, in the proportions following, that is to say : for each and every share, not exceeding five, one vote ; for every two shares not exceeding nineteen, one vote ; for every three shares above nineteen and not exceeding forty-nine, one vote ; for every four shares above forty-nine, and not exceeding seventy-three, one vote ; for every six shares above seventy-three, and not exceeding ninety-seven, one vote ; and for every eight shares above ninety-

Ratio of  
votes.



seven, one vote ; but no person, co-partnership, or body politic, shall be entitled to a greater number than one hundred votes ; and after the first election, no share or shares shall confer a right of voting, which shall not have been holden three calendar months previous to the day of election, and stockholders may vote by proxy.

Three-fourths of the directors may be re-elected.

2d. Not more than three-fourths of the directors, who shall be in, at the time of an annual election, shall be elected for the next succeeding year ; and no director shall hold his office more than three years out of four, in succession, but a director, who shall be a president at the time of an annual election, may always be re-elected.

Qualification for directors.

3d. None but a stockholder, a resident citizen of this territory, shall be a director, nor shall any director be entitled to any emolument ; but it shall be lawful for the president to receive such compensation, as the stockholders shall at a general meeting assign to him.

Number of board.

4th. Not less than seven members shall constitute a board for the transaction of business, of whom the president shall always be one, except in cases of sickness or necessary absence, in which case his place may be supplied by another director, whom he, by writing under his hand, shall depute for that purpose, and the director, so deputed, may do and transact all necessary business, belonging to the office of the president of the said corporation, during the continuance of the sickness or necessary absence of the president.

Power to call meetings.

5th. It shall be lawful for the directors to call a general meeting of the stockholders, at any time they may deem it necessary and expedient, and a number of stockholders, not less than twenty, who, together, shall be proprietors of one hundred shares or upwards, shall have power, at any time, to call a general meeting of the stockholders, for purposes relative to the institution, giving at least six weeks' notice in the newspapers of Mobile, and specifying in such notice, the object or objects of such meeting.

Officers to take oath.

6th. The cashier or treasurer, and the other officers, clerks and servants of the corporation, shall, previously to entering on the duties of their offices, respectively, give bond, with such security, and in such form, as the directors shall require, conditioned for the faithful discharge of their duties, respectively.

Directors may open subscriptions.

7th. The directors shall have power at all times, giving at least forty days' notice, to open subscriptions for stock, until the whole capital of five hundred thousand dollars shall be subscribed : *Provided*, That no person, co-partnership, or body corporate, shall subscribe for more than twenty shares, within the first six days after the subscription shall be open ; and the commissioners are hereby authorized and required, to administer an oath to any and every person subscribing, that he, she, or they, have not subscribed, and are not, directly or indirectly, subscribing for a greater number of shares, within the time aforesaid, than is hereby limited.

Amount of bills to be emitted.

8th. The total amount of the bills, emitted by the corporation, shall never exceed three times the amount of the capital stock actually paid in, and, in case of excess, the directors, under whose administration it shall happen, shall be liable for the same in their natural and private capacities, and an action of debt may, in such case, be brought against them, or either of them, or any of their heirs, executors, or administrators, in any court of record in this territory, by any creditor or creditors of the said corporation, and may be prosecuted to judgment and execution ; any condition, covenant,

Directors, how liable.



or agreement to the contrary notwithstanding; but the corporation shall not, on account of this provision, be the less liable for, and chargeable with, the said excess: such of the directors who may have been absent when the said excess was contracted, or created, or who may have dissented from the resolution or act, whereby the same was contracted or created, may respectively exonerate themselves from being so liable, by forthwith giving notice of the fact, and their absence or dissent, to the stockholders at a general meeting, which they shall have power to call for that purpose.

9th. The stock of said corporation shall be assignable and transferable, according to such rules as shall be instituted in that behalf, by the laws and ordinances of the same. Stock transferable.

10th. The corporation shall not take more than at the rate of six per centum per annum, for or upon its loans or discounts. Six per cent.

11th. The bills obligatory, and of credit, under the seal of the said corporation, which shall be made to any person or persons, shall be assignable by endorsement, under the hand or hands of said person or persons, and his, her, or their executors and administrators, and of his, her, or their assignee or assignees, and so as absolutely to transfer and vest the property thereof in each and every assignee or assignees successively, and to enable such assignee or assignees, and his, her, or their executors or administrators, to maintain an action thereupon, in his, her, or their own name or names: *Provided*, That said corporation shall not make any bill obligatory or of credit, or other obligation, under its seal for the payment of a less sum than five hundred dollars, and the bills or notes which may be issued by order of said corporation, signed by the president, and countersigned by the cashier thereof, promising the payment of money to any person or persons, his, her or their order, or bearer, although not under the seal of the said corporation, shall be binding and obligatory upon the same, in like manner, and with like force and effect, as upon any private person, if issued by him, her, or them, in his, her, or their private or natural capacities; and shall be assignable and negotiable in like manner as if they were so issued, by such private person or persons, that is to say: those which shall be payable to any person or persons, his, her, or their order, shall be assignable by endorsement, in like manner, and with like effect, as foreign bills of exchange now are, and those, which are payable to bearer, shall be assignable and negotiable by delivery: *Provided*, That all bills or notes, so to be issued by said corporation, shall be made payable on demand, other than bills or notes for the payment of a sum not less than fifty dollars each, and payable to the order of some person or persons, which bills or notes it shall be lawful for said corporation to make payable, at any time not exceeding sixty days from the date thereof. Bills assignable. Provisos.

12th. Half-yearly dividends shall be made of so much of the profits of the bank, as shall appear to the directors advisable; and once in three years the directors shall lay before the stock-holders, at a general meeting, for their information, an exact and particular statement of the debts, which have remained unpaid after the expiration of the original credit, for a period for treble the term of that credit, and of the surplus of the profits, if any, after deducting losses and dividends; if there shall be a failure of the payment of any part of the sum subscribed to the capital of the said bank, by any person, co-partnership, or body politic, the party failing shall lose the benefit of any dividend, which may have accrued prior to the time for making payment, and during the delay of the same. Half-yearly dividends.



13th. No note shall be issued of less amount than one dollar.

Notes, how  
collected.

§ 9. If any person or persons shall be indebted to said corporation, as maker or endorser of any note, bill, or bond, expressly made negotiable and payable at the said bank, and shall delay payment thereof, it shall be lawful for the corporation, after having given at least ten days' notice thereof, and producing to the court before whom the motion is made, the certificate of the president of the bank, that the debt is, really and *bona fide*, the property of the bank, to move for judgment and award of execution, against such debtor or debtors, his, her, or their heir or heirs, executors or administrators, in any court of record within this territory : *Provided, always*, That if the defendant, or defendants, shall appear, and contest the claim, the court, shall, *instanter*, empanel a jury to try the issue, and thereon give judgment accordingly ; *And provided, also*, That no note, bill, or bond, shall be negotiable at said bank, unless it shall be so expressed on the face of such note, bill, or bond ; and all debts due by the said corporation, by bond, bill, note, or otherwise, to any individual or body corporate, may be sued for and recovered in like manner.

Provisos.

Continuance  
to collect.

§ 10. Notwithstanding the expiration of the time for which the said corporation is created, it shall be lawful to use the corporate name, style, and capacity, for the purpose of suits, for the final liquidation and settlement of the affairs and accounts of the corporation, and for the sale and disposition of their estates, real, personal, and mixed, but not for any other purpose, or in any other manner whatsoever, nor for a period exceeding two years after the expiration of the said term of incorporation.

Stockholders  
liable.

§ 11. For all debts contracted by said corporation, either by bond, bill, or note, or other contract, the stockholders at the time the said debt or debts may have been contracted, shall be liable for the same in their natural or private capacities, in proportion to the number of shares by them held, and may be proceeded against therefor, jointly or severally, in any court having jurisdiction of the same ; but this provision shall not be construed to exempt the said corporation, or the lands, tenements, goods, or chattels of the same, from being also liable.

One-fifth re-  
served.

§ 12. The directors of said bank shall, for and during the term of ten years, reserve for the territory or state, in which the bank may be in operation, one-fifth of the shares in said bank, and at any time the legislature of the state or territory shall have the aforesaid one-fifth of the shares, or any part thereof subscribed for, then the governor of the state or territory shall have power to appoint a number of directors, proportionate to the number of shares held by the territory or state in said bank ; and the stockholders shall, at the next annual election, proceed to the election of the residue of the directors, as authorized by this act ; and the territory or state shall be liable for all debts contracted by said bank in their capacities as such, to the extent of interest held by the territory or state in said bank.

1834—(11)  
Sec. 1.  
Capital in-  
creased.

§ 13. The amount of capital stock of the Bank of Mobile, as was limited and established by the first section of an act, to be entitled "An Act to establish a bank in the town of Mobile," passed 20th November, 1818, and which declares that it shall not exceed the sum of five hundred thousand dollars, divided into five thousand shares, of one hundred dollars each, shall, from and after the passage of this act, be increased to one million five hundred thousand dollars, divided into fifteen thousand shares of one hundred dollars each, two-fifth parts whereof shall be reserved for the state of Alabama.

Two-fifths  
reserved.

1b. Sec. 2.

§ 14. For the purpose of raising the amount of said increased capi-



tal stock of the said bank, books of subscription shall be opened in the city of Mobile, on the first Monday of May next, under the superintendence of three commissioners, to be appointed by the governor of this state, and shall remain open at least thirty days, and until the sum of two hundred thousand dollars shall be subscribed: *Provided,* <sup>Subscriptions opened in Mobile. Governor to appoint commissioners.</sup> *always,* That the president and directors shall have power, at all times thereafter, by giving at least sixty days' notice in any newspaper printed in said city, to open subscriptions for stock, until the whole capital of one million five hundred thousand dollars shall be subscribed, excluding therefrom the said two-fifth parts thereof reserved to the state as aforesaid; *And provided, also,* That no person, co-partnership, or body corporate, shall subscribe for more than thirty shares within the first six days after the subscription shall at any time be opened, and the said directors or superintendents are hereby authorized and required, to administer an oath to any and every person subscribing, that he, she, or they, have not subscribed, and are not, directly or indirectly, subscribing for a greater number of shares within the aforesaid time, than is hereby limited; *And provided, further,* That books shall be opened at the towns of Florence, Montgomery, Tuscaloosa, and Huntsville, on the first Monday in May next, and continue open one month, and no longer, under the superintendence of three commissioners, at each place, to be appointed by the governor, to open books of subscription for one hundred thousand dollars at each place, in any sums that those desiring to subscribe may apply for. The subscribers to said stock at Huntsville, Montgomery, Florence and Tuscaloosa, are hereby required to pay one-fourth part thereof, at the time of subscribing, and all other and further payments shall be made at Mobile, as provided for in the 3d section of this act: *Provided, further,* That the said commissioners shall, with as little delay as practicable, forward said books and money to the president and directors of the bank at Mobile. <sup>Shares limited. Subscriptions to be opened in Florence, Montgomery, Tuscaloosa and Huntsville. Commissioners to forward books to president and directors.</sup>

§ 15. The payment of the said subscription shall be made and completed by the subscribers, at the times and in the manner following, to wit: one-fourth part thereof at the time of subscription; one-fourth part thereof in three months thereafter; and the remaining half in two equal instalments, at nine and twelve months thereafter. <sup>Ib. Sec. 3. Shares, how paid.</sup>

§ 16. The term and period of time of the present charter of the bank of Mobile, aforesaid, which by its own limitation will expire on the first day of January, 1839, shall hereby be extended: and the subscribers to said bank, their successors and assigns, shall continue to exist and remain, from and after the termination of the time of their present charter of incorporation, by the name and style of "The President, Directors and Company of the Bank of Mobile;" and shall continue, until the first day of January, 1859, with all the powers, rights, privileges and immunities, accorded and extended to them by the provisions of the fourth section of the said entitled "Act to establish a bank in the town of Mobile," and subject to all the prohibitions and restrictions contained in the provisions of the said last mentioned section of the said act. <sup>Ib. Sec. 4. Charter extended.</sup>

§ 17. For the better management, government and direction of the affairs of said corporation, during the period of time of the extension and prolongation of the said charter, as aforesaid, all and singular the provisions of the said entitled "Act to establish a bank in the town of Mobile," passed November 20th, 1818, so far as the same may be applicable, which are not repugnant to, or which may not conflict with, the provisions or subsequent sections of this act, shall be and they are hereby expressly declared, to be and remain in <sup>Ib. Sec. 5. Former act of incorporation revived and continued.</sup>



full force and effect, in the same manner as if incorporated in direct and express language, herein.

*Ib. Sec. 6.*  
Rate of interest.

§ 18. The said corporation shall not hereafter take, or receive, more than at the rate of the following per centum per annum, for or upon its loans or discounts, that is to say: upon promissory notes discounted by the said Bank of Mobile, made negotiable and payable at any bank within the city of Mobile, and not having more than six months to run, at a rate of interest not to exceed six per centum per annum, and upon promissory notes made negotiable, as aforesaid, and payable after six, and not having more than nine months to run, at a rate of interest not to exceed seven per centum per annum, and upon all notes made negotiable and payable, as aforesaid, and payable after nine months, and not exceeding twelve months, at a rate of interest not exceeding eight per centum per annum.

*Ib. Sec. 7.*  
Governor to appoint commissioners to examine Bank.

§ 19. It shall be lawful for the governor of this state to appoint, annually, three commissioners, for the examination of said bank, who shall, within two months immediately preceding the annual meeting of the legislature, proceed to the said bank, and there examine all books, papers and accounts in the said bank, that the said commissioners, or a majority of them, may think proper and material for the better understanding of the condition of the said bank, and also the cash on hand.

*Ib. Sec. 8.*  
Officers to give commissioners information.

§ 20. It shall be the duty of the president and directors, and all officers of said bank, to furnish said commissioners, when examining the affairs of said bank, information, and they shall, moreover, be bound to answer any interrogatory put to them by the said commissioners, which may be deemed material to the subject matter of their investigation.

*Ib. Sec. 9.*  
Commissioners to report to legislature. Compensation.

§ 21. The commissioners may select their own time for the examination of said bank, and they shall report to the legislature any violations of said charter: and they shall receive for their services five dollars, for each and every day they may be engaged in such examination, to be paid by said bank upon the certificate of the president thereof, stating the time served by each commissioner, respectively.

*Ib. Sec. 10.*  
Governor and others to issue stock when authorized.

§ 22. The governor, comptroller, treasurer of the state, and president of the Bank of the State of Alabama, whenever authorized so to do by law, shall have power to issue certificates of state stock, for the two-fifths of the capital stock hereby reserved, bearing a rate of interest not to exceed five per cent. per annum, made payable to the President, Directors and Co. of the Bank of Mobile and their assigns, redeemable at the expiration of said charter; and whenever said certificates of state stock shall be issued, the governor shall have power to appoint directors as is expressed in the 12th section of the act, incorporating the subscribers to the Bank of Mobile, to which this is supplemental.

*Ib. Sec. 11.*

Bonus, how paid.

§ 23. In consideration of the powers, privileges and extension of said charter, and in lieu of all taxes for the period of twenty years, from and after the first of January, 1839—the President, Directors and Co. shall pay a bonus of one hundred thousand dollars into the treasury of the state of Alabama, which bonus shall be paid in equal annual instalments, on the first day of January in each and every year, during the continuance of said charter.

1835—(10)  
Sec. 1.  
Capital increased.  
*Ib. Sec. 2.*  
Directors.

§ 24. The capital stock of the Bank of Mobile is hereby increased to the sum of one million eight hundred and fifty thousand dollars.

§ 26. The board of directors of the said Bank of Mobile, shall consist of fifteen members, and the governor shall appoint six direct-



ors on the part of the state, for the present year; and after the present year, the directors on the part of the state shall be elected by the joint vote of both houses of the general assembly.

§ 26. The governor, comptroller, treasurer of the state, and president of the Bank of the State of Alabama, are hereby authorized and directed, to issue certificates of state stock to the amount of seven hundred and forty thousand dollars, being the two-fifths of the capital stock of the said bank, to which the state is entitled; which said stock shall bear a rate of interest, not to exceed five per centum per annum, and shall be made payable to the President, Directors and Co. of the Bank of Mobile and their assigns, redeemable on the fourth day of January, one thousand eight hundred and fifty-nine.

*Ib. Sec. 3.*  
Certificates of state stock to be issued.

§ 27. Whenever said state stock shall be issued in conformity with the provisions of this act, the same shall be delivered to the President, Directors and Co. of the Bank of Mobile, upon their giving to the persons authorized to issue the same, a certificate under the seal of the said Bank, showing that this state is entitled to two-fifths of the capital stock of said bank, reserved as aforesaid, and to the dividends and profits arising therefrom.

*Ib. Sec. 4.*

§ 28. Books shall be opened in the city of Mobile on the first day of May next, under the superintendence of three commissioners to be appointed by the governor of this state, and shall remain open for the space of thirty days, or until the sum of ten thousand dollars shall be subscribed: *Provided*, That no person, co-partnership or body corporate, shall subscribe for more than one share within the first six days after the said books shall be opened.

*Ib. Sec. 5.*  
Books of subscription to be opened.

§ 29. It shall be the duty of the directors of the said bank, within three months after the passage of this act to call a general meeting of the stockholders thereof, by giving at least six weeks' public notice of the time and place of said meeting, in one or more newspapers published in the city of Mobile, for the purpose of submitting this act to said stockholders for their assent to the provisions of the same, and which notice shall specify the object of said meeting, and a number of votes representing a majority of the said stock, counting the same in conformity with the scale established in the first article of the eighth section of the charter of said bank, shall be necessary to the adoption of this act, as an amendment to the said charter, and from and after the said adoption, this act shall be taken as a part of the charter of said bank.

*Ib. Sec. 6.*  
Meeting of stockholders.

§ 30. Should the said stockholders fail or refuse to signify their assent to this act, within the term above specified, then the amount of state stock to be issued under the provisions of the first section of this act, shall be reduced to six hundred thousand dollars.

*Ib. Sec. 7.*  
If they dissent, stock to be reduced.

§ 31. The President, Directors and Co. of the Bank of Mobile, 1835—(11) are hereby authorized to surrender to the state of Alabama, and deliver up to be canceled, the certificates of state stock for the sum of six hundred thousand dollars, which were issued by the governor, comptroller, treasurer of the state, and the president of the Bank of the State of Alabama, payable to the President, Directors and Co. of the Bank of Mobile and their assigns, on the fourth day of January, one thousand eight hundred and fifty-nine, under the authority of an act, entitled "An Act to amend the charter of the Bank of Mobile and to authorize the taking of the sum of seven hundred and forty thousand dollars by the state, of the stock of said bank," approved January tenth, one thousand eight hundred and thirty-five, and which stock was delivered to said bank in payment of six thousand shares

*Sec. 1.*  
Bank authorized to surrender certificates of state stock before issued—and to receive other stock in lieu thereof.



in the capital stock of said bank, taken by the state of Alabama; and they shall be entitled to receive, in lieu thereof, from the state of Alabama, similar certificates for a like sum, redeemable at the same time, and bearing interest at the rate of five per centum per annum, payable semi-annually, the principal of which, as well as the interest, shall be made payable at such place or places in or out of this state, as the said President, Directors and Co. shall request.

*Ib. Sec. 2.*  
Governor  
and others to  
issue other  
certificates  
of state  
stock, in lieu  
of those sur-  
rendered.

§ 32. When the said President, Directors and Co. shall surrender the said certificates of state stock, issued as aforesaid, to be canceled, it shall be the duty of the governor, the comptroller, the treasurer of the state, and the president of the Bank of the State of Alabama, to issue and deliver to the said President, Directors and Co., new certificates for a like amount of six hundred thousand dollars, payable to the President, Directors and Co. of the Bank of Mobile or their assigns, bearing interest at the rate of five per centum per annum, payable semi-annually, the principal of which shall be payable on the fourth day of January, in the year one thousand eight hundred and fifty-nine, and which said certificates shall provide for the payment of said loan, and the interest thereof, at such place or places as the said President, Directors and Co. shall request, and shall be in such form as the said President, Directors and Co. shall desire.

*Ib. Sec. 3.*  
All the ex-  
penses &c.  
incident to  
the change  
to be paid by  
the bank of  
Mobile.

§ 33. All the expenses, which shall be incurred by the state, in preparing the new certificates of stock provided for by this act, and all the exchange and expenses, which may be necessary to be paid, to enable the state to make the payment of the principal and interest, elsewhere than in Mobile, shall be borne and paid by the said President, Directors and Co. of said Bank of Mobile: and before the new certificates of stock, provided for by this act, shall be delivered to the said bank, the said bank shall execute and deliver to the governor an obligation in due form, under the seal of the bank, binding the bank to pay all the exchange and expenses, caused by the renewal and alteration of the form and terms of said stock, under the provisions of this act.

1840—(8)  
Sec. 5.  
Bank of Mo-  
bile author-  
ized to issue  
post notes.

Provisos.

§ 34. The Bank of Mobile is hereby authorized, when it shall deem it advisable, to issue post notes, from time to time, of any denomination not less than ten dollars, and in such sums as it may think proper: *Provided*, Such post notes shall, in no instance, be made payable at a longer period than twelve months after date; *And provided*, That such issue of post notes shall, at no time, exceed the amount of five hundred thousand dollars, by each bank: *Provided*, That this particular amendment to the charter of the above bank, shall be under the control of the legislature, and may be repealed by the legislature, without the consent of the stockholders.

1841—(8)  
Sec. 1.  
Bank of Mo-  
bile to have  
half the am't  
of its liabili-  
ties in gold  
and silver in  
its vaults on  
1st July, an-  
nually.

§ 35. The Bank of Mobile shall own and have deposited in its vaults, in gold and silver, on the first day of July, in each and every year, one half the amount of its immediate liabilities on notes issued: *Provided*, The amount of specie, which said Bank shall be so required to keep on hand, shall not exceed one-fourth of the capital stock upon which it does business; and the said Bank of Mobile is hereby required to keep on hand, as nearly as possible, the amounts herein before specified, after the times before mentioned.



## BANKING PRIVILEGES AND FOREIGN BANK BILLS.

WHEREAS, sundry foreign corporations having been in the habit of exercising the banking privileges conferred upon them by other states or countries, by purchasing bills of exchange, or by discounting promissory notes, within the state of Alabama, in violation of the sovereignty and rights of the said state, and against the true policy and interest thereof; therefore—

§ 1. *Be it enacted, &c.* That it shall not be lawful for any corporation, invested with the privileges of banking, and the authority of discounting bills of exchange and promissory notes, by any state, other than the state of Alabama, to exercise such privileges, by agent or otherwise, within the limits of the state of Alabama.

§ 2. The agent or agents of any such corporation, who shall violate the provisions of this act, shall be liable to prosecution for the same in the circuit court of the county, where the offence may be committed; and, upon indictment and conviction, shall be fined in a sum not less than two thousand dollars.

§ 3. Each and every person, who may be a partner, or stockholder, in any company, corporation, or unchartered banking association, shall be liable to the holder of any note, bill, bond, or post note issued, emitted, or put in circulation, by said company, corporation or unchartered banking association, for the amount of said note, bill, bond, or post note, whether he be a limited co-partner or not, which may be recovered by the holder thereof, before any court having competent jurisdiction.

§ 4. It shall not be lawful for any person or persons to offer in payment, or to pass or circulate within this state, any bill or note of any bank out of this state, of a less denomination or amount than five dollars: and all payments made, or which purport or shall be pretended to be made, after the first day of June next, in any such note or notes, bill or bills, shall be entirely void and of no effect whatever, as if no such payment had been made or been pretended to be made: and all such notes or bills shall be deemed to be of no value in this state.

§ 5. If any person or persons, shall be guilty of the offence of offering in payment, or passing, or circulating within this state, any bill or note of any bank out of this state, of a less denomination or amount than five dollars, every such person or persons so offending, shall, on conviction before any justice of the peace, be fined in the sum of twenty dollars for each and every such offence; to be paid into the treasury of the county in which such offence shall have been committed: *Provided,* the penalty of twenty dollars shall only be incurred on the commission of the second offence.

## BASTARDY.

§ 1. WHEN any single woman, who shall be pregnant, or delivered of a child, which by law would be deemed a bastard, shall make complaint to any one or more justices of the peace for the county, where she may be so pregnant or delivered, as aforesaid, and shall accuse any one of being the father of such child, it shall be the duty



of such justice or justices, to issue process to the sheriff or coroner, or any constable of such county, against the person so accused as aforesaid, and cause him to be brought forthwith before him.

Examination  
before ma-  
gistrate.

§ 2. Upon his appearance, it shall be the duty of the said justice or justices, to examine the said female, in the presence of the man alleged to be the father of the child, touching the charge against him; and if said justice or justices shall be of opinion, that sufficient cause appears, it shall be his or their duty to bind the said person, so accused, in bond, with good and sufficient security, to be and appear before the next county court, to be holden for said county, and in the mean time to be of good behavior.

County court  
to cause is-  
sue to be tri-  
ed by a jury.

§ 3. The county court aforesaid, at their next term, shall have full and complete cognizance and jurisdiction of said charge of bas-  
tardy. And the court shall cause an issue to be made up, "whether the reputed father is the real father of the child, or not;" which issue shall be tried by a jury: *Provided, nevertheless*, That the in-  
quiry shall not be *ex parte*, but the imputed father shall have a right to appear, by himself or counsel, and controvert, by all legal evi-  
dence, the charge alleged against him.

Judgment  
against de-  
fendant not  
to exceed  
fifty dollars a  
year, for ten  
years.

§ 4. If the issue is found against the defendant, or imputed father, then he shall be condemned by the judgment of said court, to pay, not exceeding fifty dollars, at the discretion of said court, yearly, for ten years, towards maintenance and education of said child; and the said imputed father shall give bond and security, for the due and faithful payment of said sum of money, which shall be made payable to the said court, and laid out and appropriated, under their special order and direction, from time to time made, so that the same be not paid to the mother of said child; which bond shall be, and hereby is declared to have the same force, validity, and effect, as a judgment of said court, upon which executions may issue, as often as money thereon shall become due and payable: *Provided, however*, That if said child should never be born alive, or being born, should die at any time, and that fact suggested upon the record of the county court, then and from that time the bond aforesaid shall be void. (1)

Death of  
child to va-  
cate the  
bond.

Judgment,  
when issue  
is found  
against the  
woman.

§ 5. If upon the trial of the issue aforesaid, it shall be found by the jury against the woman, or that the child imputed is not the child of the pretended father, then the judgment of the court shall be, that he be discharged hence, and that the woman making the com-  
plaint shall pay all costs occasioned thereby.

Child legiti-  
mated by in-  
termarriage  
of its  
parents.

§ 6. If the mother of said child and the imputed father shall at any time after its birth intermarry, the child shall, in all respects, be deemed and held legitimate, conformably to the maxim of the civil law, and the bond aforesaid be void.

Guardian to  
be appointed  
by the court,  
who shall re-  
ceive the  
money.

§ 7. It shall be the duty of the court, to appoint a guardian or guardians to said child, to whom, upon his or her entering into good and sufficient security, for the faithful performance of his or her duty, the money shall be paid over by the court.

1816—(4)  
Sec. 1.  
On demand  
of defendant,  
court to em-  
panel jury  
of by-stand-  
ers.

§ 8. Whenever a case of bastardy shall be returned to the county court, said court shall have power and authority to cause to be summoned and empaneled a jury, in the same manner as *tales* jurors are summoned, for the purpose of trying the issue of bastardy, if the defendant, or reputed father, shall demand the same.

(1) On writ of error prosecuted by the putative father, upon a bastardy bond, the judge of the county court, and not the mother of the child, should be made defendant.—Brown *et al.* v. McLane, *Min. Rep.* 208.



§ 9. Whenever the father of any bastard child or children shall desire to render any such bastard child or children legitimate, so as to enable them to inherit his estate, in the same manner as children born in lawful wedlock do, it shall be lawful for any such father to file in open court, in either the county or circuit court of the county in which he resides, a declaration, or statement in writing, setting forth the names of the children proposed to be rendered legitimate, their ages, as nearly as may be, the name of their mother, that they are his natural children, and that he thereby recognizes them, and makes them capable of inheriting his estate in the same manner as if they had been born in lawful wedlock, which declaration shall be signed by the person making it, attested by the clerk of the court in which it is filed, and entered at full length of record : whereupon the said child or children, in any such declaration, shall become the legitimate child or children of the person making such declaration, and be capable in law of inheriting his estate in the same manner as if they had been born in lawful wedlock : and if, at the time of filing any such declaration, the person, filing the same, shall desire to change the name of any child or children therein mentioned, he shall set forth the fact, together with the name to which he desires the change to be made; whereupon, the name shall be changed accordingly, and the latter name shall become the lawful name of any such child or children.

1833—(9)  
Sec. 1.  
Mode of legitimating.

Effect thereof.

Names of bastards, how altered.

§ 10. When any person shall desire to change his or her name, he or she shall file in the county or circuit court of the county in which he or she resides, a declaration or statement in writing, setting forth his or her then name, and the name to which he or she desires to change it ; which declaration shall be subscribed by the person making it, with his or her then name, attested by the clerk, and entered at full length of record ; whereupon, the name of such person shall be changed accordingly, and the latter name shall thereupon become the lawful name of such person : *Provided, nevertheless,* That any such person shall, notwithstanding such change, be liable for five years, to be sued by his or her original name ; unless when a contract in writing shall be made with him subsequent to his change of name, in which his latter name shall be recognized, or to which it shall be subscribed.

Ib. Sec. 2.  
Any person may alter his or her own name.

Proviso.

§ 11. For attesting and recording the declaration in the first and second sections of this act, the clerk of the court in which they are filed shall be entitled to one dollar, each ; and when such declarations are filed in the county court of any county, the judge of said court shall be entitled to the like sum for each declaration, to be paid by the party filing the same.

Ib. Sec. 3.  
Fees of clerk, &c. for attesting, &c.

## BOATS.

§ 1. It shall not be lawful for any steam-boat to ply for freight or passengers, between either of the ports of Mobile or Blakely, and any of the towns, landings or places, in either of the rivers, Mobile, Alabama, Tombeckbee, or their tributaries, without having previously undergone a thorough survey and examination by the board of harbor-master and wardens of the port of Mobile, and been found, in all respects, staunch, well-provided and *river-worthy* for the space of at least one year thereafter. And the said board of harbor-master and

1836—(12)  
Steam-boats to be examined by the harbor-master and wardens of the port of Mobile.



Board to  
grant certi-  
cate of  
soundness.

Owners, &c.  
of boats not  
certified, lia-  
ble for dam-  
ages.

Harbor mas-  
ter and ward-  
ens to exam-  
ine damaged  
property.

Compensa-  
tion.

Act, how  
construed.

1830—(12)  
Sec. 1.  
Duty of com-  
manders of  
boats in land-  
ing goods.

*Ib.* Sec. 2.  
Penalty for  
neglect of  
duty.

wardens are hereby authorized and required, to make such survey and examination, at least once in every year, or oftener, if in the opinion of said board the same may be proper; and to charge and receive for every such survey and examination, the sum of ten dollars; and if, upon such survey and examination, the said board shall be satisfied, that the boat so examined, is staunch and well found, both in hull and machinery, and, in all respects, well found and river-worthy for one year thereafter, they shall grant a certificate thereof, and enter the same of record, in the port-wardens' office.

§ 2. If the owner, agent, consignee, or master of any steam-boat, shall ply any such steam-boat, on either of the aforesaid waters, without having first obtained a certificate for such boat, as herein required, such owner, agent, consignee, and master, shall severally be liable for all damages, which may occur to property shipped on such boat, in consequence of any casualty arising from the dangers of the river navigation, or from any accident to the engine or machinery of such boat. And in all suits for damages, arising under this act, the burthen of proof shall rest upon the carrier; and the certificate of the board of harbor-master and wardens aforesaid, duly authenticated under their seal, shall be legal evidence of the transactions of said board.

§ 3. The harbor-master and wardens aforesaid, or any three of them, shall be surveyors of damaged property, brought into the port of Mobile, in any steam-boat, barge, or other craft: and they shall, upon every such survey, certify, under their hands, the amount of damages which any owner or shipper of such property may have sustained, and shall cause entries to be made, in a book to be kept for that purpose in their office, of all surveys made and certificates granted under this act; which surveys and certificates, duly authenticated by the official seal of the said board, shall be admitted as legal evidence in any court of this state; and for each survey, certificate and entry, they shall be entitled to two dollars, and for every duplicate thereof, one dollar; and the said wardens shall severally be entitled, for their services as surveyors of damaged property aforesaid, at the rate of three dollars per day.

§ 4. This act shall not be construed to exempt the owner or master of any steam-boat from a recovery of damages, for the loss or damage of any article taken on board of said boat, according to the law in force before the passage of this act.

§ 5. It shall be the duty of captains or commanders of steam-boats and barges, and other vessels, navigating any of the navigable rivers in this state, to land all goods of any description at the landing for which said goods were shipped, and shall place them at least ten feet perpendicular above the edge of the water; unless the river shall be too high to admit of said goods being landed ten feet above the edge of the water; and in that case, it shall be the duty of said captain or commander to land said goods on the highest and most secure place within one hundred yards of said landing.

§ 6. If any captain or commander of any steam-boat or barge, or other vessel, shall neglect or fail to comply with the provisions of the first section of this act, the owner or owners, and the captains or commanders, of such steam-boat or barge, shall, jointly or severally, forfeit and pay to the owner or owners of such goods, double the value of the goods, to be recovered before any court of record, or before any justice of the peace, as the case may require, together with double costs.



§ 7. When any cotton bales or bags shall be torn, by the use of what are called *cotton hooks*, or *otherwise*, in loading or unloading on board of any steam-boat or barge, or other vessel, the owner or commander of such steam-boat or barge shall forfeit the freight of the bales so torn or damaged, and shall pay all damages to the owner or consignee of the cotton, to be recovered in the manner specified in the second section of this act.

§ 8. There is hereby established in the city of Mobile a board of engineers, for the purpose of examining such persons as are now, or shall hereafter be engaged as engineers, employed on any steam-boat engaged in navigating the waters of this state, emptying into the Mobile bay.

§ 9. Said board shall consist of a president and ten directors, who are hereby declared to be a body corporate, by the name and style of "The President and Directors of the Board of Steam-boat Engineers of Mobile," any two of whom, with the president, or in the necessary absence of the president, any three of whom, shall constitute a board to do business. Said board shall, at their first meeting, or as soon thereafter as may be practicable, elect a secretary, who shall attend their meetings, and do and perform all the duties of secretary, as prescribed in this act, or any by-law or ordinance of said board. And said corporation shall have full power, and be able and capable in law, to purchase, have and hold, possess and enjoy, any real or personal estate, not to exceed in value the sum of twenty thousand dollars, as they may think proper; and by its name, above specified, to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all manner of actions, suits, matters and things, depending in any court of law and equity in this State; and to make such rules and by-laws for their government, not repugnant to the constitution of the United States and this state, as they may deem expedient.

§ 10. No engineer shall be employed by any captain or owner of any steam-boat navigating the said waters of this state, who shall not first have undergone an examination before said board, and obtained a certificate (signed by the president and secretary of said board,) of his competency and skill in the capacity of engineer. And, if any person shall violate the provisions of this section of this act, he shall forfeit and pay the sum of fifty dollars, for the use of said corporation, for each and every voyage performed, without said certificate first being obtained, to be sued for and recovered in the name of said corporation, before any court of competent jurisdiction, which fine shall be applied to the purposes hereinafter specified.

§ 11. Any engineer, who shall engage in navigating any steam-boat running on said waters as engineer, without first having obtained the said certificate, signed as aforesaid, from said board, shall forfeit and pay a fine of twenty-five dollars for each and every voyage so performed, to be sued for and recovered in the manner specified in the third section of this act.

§ 12. If any captain or owner of any steam-boat, employed as aforesaid, shall employ any engineer, without first having obtained said certificate, and the life of any citizen shall be destroyed by explosion, or the mismanagement of said engineer, then and in that event, the said captain, owner or engineer, may be indicted for manslaughter, in any court, having proper jurisdiction of the offence—and in case of the loss of property, goods, wares, and merchandise, in consequence of the employment, or mismanagement of said engineer, the owner or captain, so employing said engineer, may be,

*Ib. Sec. 3.*  
Injury done  
to cotton  
bales by  
hooks or  
otherwise.

1841—(9)  
*Sec. 1.*  
A board es-  
tablished in  
Mobile to ex-  
amine engi-  
neers.

*Ib. Sec. 2.*  
To consist of  
a president  
and ten di-  
rectors.

To elect a  
secretary.

To hold real  
estate not ex-  
ceeding  
\$20,000.

*Ib. Sec. 3.*  
No captain  
or owner of  
a steam-boat  
to employ  
an engineer,  
who has not  
been exam-  
ined and ob-  
tained certi-  
ficate of com-  
petency.  
Penalty for  
violating this  
act.

*Ib. Sec. 4.*  
Penalty on  
engineer  
serving  
without  
certificate.

*Ib. Sec. 5.*  
Penalty on  
captain, in  
the event of  
loss of life or  
property.



jointly or severally, sued for, and recovery had against them, in any court of competent jurisdiction, of the full value of the said property, goods, wares or merchandise, so lost as aforesaid; and the want of said certificate shall be taken as *prima facie* evidence of mismanagement and neglect.

*Ib. Sec. 6.*  
Persons not  
competent as  
first engineer  
may serve as  
second.

§ 13. When said board shall, upon examination, find any applicant unqualified to perform the duties of first engineer, and competent for second engineer, they shall so state it in their certificate, and he may be lawfully employed as such.

*Ib. Sec. 7.*  
Engineer  
may be dis-  
missed for  
intoxication,  
or other  
gross mis-  
conduct.

§ 14. If any engineer, after obtaining his certificate, shall grossly mismanage as an engineer, by intoxication, sleeping on his watch, or any other gross violation of his duties, he shall, upon complaint, and upon full and sufficient proof thereof, before said board, be dismissed, and his certificate recalled, and publication of such dismissal and recall, shall be made in some newspaper in the city of Mobile, at least three several times, and such engineer shall not again be employed on any steam-boat, navigating said waters. And if any engineer shall, thereafter, be so employed, and loss of life, on any such steam-boat, should ensue from his mismanagement or neglect, such engineer shall be liable to be indicted for murder in any court of competent jurisdiction: *Provided, however,* that no engineer, who shall have obtained his certificate as aforesaid, shall be removed, or have his certificate withdrawn, except by the vote of at least two-thirds of the whole number of the members of said board.

If afterwards  
employed, &  
death ensue  
from his  
management,  
to be indicted  
for murder.  
Proviso.

*Ib. Sec. 8.*  
President or  
any member  
of board to  
board steam-  
boats enter-  
ing the port  
of Mobile,  
& ascertain  
whether en-  
gineers have  
legal certi-  
cate, &c.

§ 15. It shall be the duty of the president, or any one or more of the members of said board, as often as may be necessary, to enter upon board any steam-boat entering the port of Mobile, and which is or shall be engaged in navigating the waters aforesaid, and ascertain whether all engineers, who may be engaged in navigating said steam-boats, have the requisite legal certificate; and in case they shall not have complied with the provisions of this act in that respect, it shall be the duty of said president or other member of this board, to give information to the board, who shall proceed forthwith against said engineer, captain, or owner, to recover the penalty therefor, as specified and authorized in this act.

*Ib. Sec. 9.*  
Fines recov-  
ered under  
this act, to  
pay salaries  
of officers,  
expenses of  
the board,  
&c.

§ 16. All fines, recovered and collected under this act, are hereby appropriated, together with any other moneys that said corporation may hereafter possess; first, to pay off and defray the necessary expenses of said board and the salaries of its officers, and then, any balance, thereafter, to constitute a fund in the hands of the board, for the relief of disabled and superannuated engineers, subject to the control of the board.

*Ib. Sec. 10.*  
Compensa-  
tion of presi-  
dent & secre-  
tary of  
board.

§ 17. The president of said board shall be entitled to receive for his services such sum, not exceeding \_\_\_\_\_ dollars per annum, as may be fixed and agreed upon by said board; and the secretary of said company shall receive such salary, not exceeding \_\_\_\_\_ dollars per annum, as may be fixed and agreed upon by said board, to be paid out of any money belonging to said corporation as the board may direct.

*Ib. Sec. 11.*  
Sum to be  
paid for cer-  
tificate by  
first and sec-  
ond engineer

§ 18. Each applicant, who shall receive a certificate as first engineer, shall pay therefor the sum of twenty dollars, and, as second engineer, the sum of ten dollars, for the use and benefit of said board, to be applied as above specified, and shall pay the sum of one dollar, each, as fee to said secretary for making out said certificate.

*Ib. Sec. 12.*  
Engineer  
who has  
been remo-  
ved, may be  
restored.

§ 19. If any engineer shall be removed and his certificate withdrawn, under the provisions of the seventh section of this act, such engineer may, on making full proof of reformation, satisfactory to



said board, be restored by the consent and vote of two-thirds of the members of said board, and shall be entitled to a new certificate, on payment of the sum and fees specified in section eleven of this act.

§ 20. The president, or any member of said board, may administer all oaths necessary to be administered, in the performance of his duties as a member of said board—the party swearing falsely shall be subject to the pains and penalties of perjury. *Ib. Sec. 13.* President or any member of the board may administer oaths.

§ 21. For the first year, which shall terminate on the first Monday in November, 1842, the following persons shall compose said board, to wit: James Curry, Malcolm Kees, Levi Cambron, William Campbell, John Culverion, Matthew McCartney, James Hamilton, Gage Hook, Hamilton Binningham, John Richardson, and David McCan, who, at their first meeting, may elect a president from their own number, and may appoint such secretary as they think proper. And, annually thereafter, on the first Monday of November, the members of said board shall be elected by the vote of the engineers, who shall have obtained certificates—which said board may elect a president and secretary, as above specified. And in case of any vacancy in the said board, by death, resignation or otherwise, the board shall fill such vacancy. The members of said board shall continue in office, until their successors are elected and qualified. *Ib. Sec. 14.* Who members of the board for the first year. *Annual elections, when held and by whom.* *Vacancies, how filled.*

§ 22. Any person, who shall furnish materials, labor, or stores, for the use of any steam-boat, or other water craft, within the state of Alabama, on the order or by the direction of the master or clerk of the same, shall have a lien on such boat for the amount of such materials, labor or stores: *Provided*, That if such lien shall not be enforced, on or before the first day of July then next ensuing the furnishing of such materials, labor, or stores, such lien shall cease to exist. *1836—(11)* *Sec. 1.* Persons furnishing materials, labor, or stores, to have a lien on boat.

§ 23. The mode of enforcing such lien shall be before any court having jurisdiction of the amount due, and shall be in the nature of a *libel* against such steam-boat or other water craft, on which the clerk of the court shall issue an order of seizure, directed to the sheriff or other officer of said court, who shall, thereupon, seize the said boat, her tackle, apparel, and furniture; but the claimants of such boat may replevy, on entering into a bond, with sufficient security, to pay such judgment as shall be rendered on said *libel*; and a trial shall be had at the first term after such boat is seized. *Ib. Sec. 2.* Mode of enforcing lien.

§ 24. Whenever any steam-boat, or other water craft, shall receive on board any goods, wares, or merchandise, as freight to be delivered at any specified landing, and shall fail to deliver the same as specified by bill of lading, the owner or consignee of such goods, wares, or merchandise, shall be entitled to a lien upon such boat, or other water craft, to be sued for and recovered in like manner. *Ib. Sec. 3.* Similar lien for goods not delivered agreeably to bill of lading.

§ 25. The claims or demands of the boat hands or laborers, upon any steam-boat or other water craft, within the state of Alabama, shall have priority of all claims, and shall be first paid; and the claims or demands of the officers shall next be paid, from the proceeds of the sale of any steam-boat or other water craft, which may hereafter be sold under the provisions of the above recited act. If the said steam-boat or other water craft shall not sell for an amount sufficient to pay off all claims against the same so libeled, then the said amount shall be divided among all said claimants *pro rata*, according to priority of lien, according to the provisions of this act. *1840—(10)* *Sec. 1.* The claims of boat hands or laborers, to have priority—of officers next. If proceeds are insufficient, division *pro rata*.

Whereas, doubts exist in the minds of the judges of the superior courts of this state, as to the applicability of the act of 1836, on the subject of *libel*:<sup>a</sup> Therefore, *1841—(10)* *Preamble.* [a See ante § 23.]



Sec. 1.  
Justices to  
have juris-  
diction in ca-  
ses of libels  
against  
steam-boats,  
to the am't  
of \$50.

§ 26. *Be it enacted, &c.* That the said act is hereby declared to be applicable to the court of justices of the peace, to all intents and purposes, and that justices of the peace in this state are hereby clothed with jurisdiction in cases of libel, to the amount of fifty dollars, under the usages and customs regulating proceedings, by libel, in the courts of admiralty.

Ib. Sec. 2.  
Judges of  
county courts  
to hold  
courts on 1st  
and 3d Mon-  
days in each  
month, in  
cases of libel  
against  
steam-boats.

§ 27. The judges of the county courts in this state may hold their courts, and the judge of the county court of Mobile shall hold his court, on the first and third Mondays in each month, for the settlement of all cases of libels, in sums over fifty dollars, sued out against steam-boats and all other water craft navigating the waters of Alabama; and when a judgment is obtained against any steam-boat or other water craft, before either the county court or justices of the peace, execution may forthwith issue, and the sheriff or constable receiving such execution, shall give ten days' notice, setting forth the name of such steam-boat or other water craft, and sell the same to the highest bidder.

Ib. Sec. 3.  
Sheriff's or  
constable's  
duties, in  
case of sale.

§ 28. The sheriff or constable, as the case may be, is hereby required to pay over the proceeds of such sale, within three days thereafter; a failure to do so, shall authorize the party suing out such libel, to proceed against said officer, as is now provided by law, in cases of failure to pay over moneys when collected: *Provided, however,* That the party, suing out a libel, shall be required before the commencement of such suit, to make a demand for the amount due him or her; *And provided, further,* That the owner or owners of any steam-boat or other water craft, shall have the privilege of replevying such property, by paying the sum claimed, or by giving security for the delivery of said property, within the time prescribed by this act.

Demand to  
be made be-  
fore suit.

Owner may  
replevy.

Ib. Sec. 4.  
Justice's fees

§ 29. Justices of the peace shall be entitled to the same fees under this act, which are now allowed for like services in cases of attachment.

1843—(10)  
Sec. 1.  
[a See ante,  
§ 10, 13.]  
Penalty on  
engineer for  
acting with-  
out certifi-  
cate.

§ 30. If any person shall perform the duties of first or second engineer of any steam-boat, without first having obtained the certificate, provided by the sixth section<sup>a</sup> of the act to which this is an amendment, he shall forfeit, for the use of the president and directors of the board of steam-boat engineers of Mobile, the sum of one hundred dollars for each and every month the said person may be so employed, which sum may be recovered by the said corporation, in any court having jurisdiction of the same, in an action of debt.

## CATTLE, HORSES, AND OTHER STOCK.

1807—(10).  
Owners of  
cattle, &c.  
to have  
marks and  
brands re-  
corded.

§ 1. EVERY person in this state, who hath any horses, cattle, or other stock, shall have a brand and ear mark, different from the brand and ear mark of every other person in the same county; which ear mark and brand shall be recorded in the office of the clerk of the county court of the county where such horses, cattle, &c. are; for which the clerk shall receive, as his fee, twenty-five cents for all his services therein; and no brand or mark, similar to a brand or mark already recorded, shall be admitted to record, but the person having the same shall be obliged to alter them, except as hereinafter excepted.



§ 2. When any dispute shall arise respecting the right to a brand, or mark, either party may apply to a justice of the peace of the county, who shall summon the adverse party to appear before him, on a certain day, therein expressed, not less than five, nor more than ten days from the time of application. And the justice shall, upon the request of either party, issue subpoenas for such witnesses as they may require, directed to any constable of the said county; who, together with the witnesses, shall receive the same fees, and be liable to the same penalties, as are allowed or inflicted for such services and attendance, or neglect, in the county courts. And it shall be the duty of the said justice to give judgment thereon; a transcript whereof, certified by the said justice, shall be a sufficient authority for the clerk to record the said brand and mark: *Provided*, That every person, who may think himself or herself aggrieved thereby, may appeal to the next county court, to be held in the said county, and not after.

Disputed marks, &c. may be settled by justices of the peace.

Party aggrieved may appeal to county court.

§ 3. No person whosoever, shall send or permit any slave or Indian to go into any of the woods or ranges in the state, to brand or mark any horse, mare, colt, mule, ass, cattle, hog, or sheep, under any pretence whatsoever, unless the said slave be in company, and under the direction of some reputable white person, who shall therein proceed according to the provisions of this act; and if any person be convicted thereof, he shall forfeit and pay for every animal so branded and marked, twenty dollars; recoverable by action of debt, in any court of this state, having jurisdiction; one-half to the use of the county, and the other half to the informer.

Slave or Indian not to be sent to mark cattle.

Penalty.

§ 4. Any person, importing into this state, cattle afflicted with a contagious distemper, shall be subject to a fine of ten dollars for every head so imported, recoverable before a single magistrate, with a right of appeal; one-half of which shall be for the use of the state, and the other half for the use of the person suing for the same.

1807—(11)

Sec. 1. Penalty for importing distempered cattle.

§ 5. It shall not be lawful for any drover or other person, to drive any horses, mules, cattle, hogs, or sheep, from the range to which the same may belong; but it shall be the duty of every drover, or other person, who may be driving off horses, mules, cattle, hogs, or sheep, if any such stock, not properly belonging to his drove, should join them, to immediately halt his drove at the nearest pen, or some other convenient place, and separate all such stock as do not properly belong to him, or the person or persons he may be employed to collect or drive stock for.

1812—(4)

Sec. 1. Stock not to be driven from their own range.

§ 6. Any drover, or other person, who shall violate the provisions of the preceding section, shall, for every offence, forfeit and pay the sum of twenty dollars, with costs, recoverable before any justice of the peace, for the use of the person suing for the same; and shall moreover be liable for damages, in an action on the case, to the party injured.

ib. Sec. 2. Penalty.

§ 7. When any slave or slaves, employed in driving stock of any kind, shall violate the provisions of this act, his or their owner or employer shall be liable for such transgression.

ib. Sec. 3. Masters accountable for their slaves.

§ 8. If any person shall willfully, or by neglect, suffer any stallion, above the age of two years, except such as are usually kept up and happen to get out by accident, to run at large in the woods, or in any unenclosed range, it shall be lawful for any person to catch and geld such stallion at the risk of the owner.

1807—(5)

Sec. 7. Stallions running at large may be caught and gelded.



## CLAIMS AGAINST THE STATE.

1820—(27)  
Preamble.

WHEREAS, from the vague and indefinite manner in which accounts are made out against the state, and the unsatisfactory manner in which they are usually attested, many frauds may be practised, and errors committed in the settlement of the same : Therefore,

Accounts,  
how made  
out.

Shall be au-  
dited by the  
comptroller.

§ 1. *Be it enacted, &c.* That all accounts, exhibited against this state, shall have every charge distinctly made out, and clearly defined, and shall be transmitted to the comptroller of public accounts, on or before the first day of October, in each year, and it shall be his duty to audit the same, and make his remarks on each, and lay them before the legislature within ten days after their meeting.

Accounts to  
be certified  
only by offi-  
cers known  
to the law.  
To be sworn  
to before jus-  
tice of the  
peace.  
Form, &c.

§ 2. All accounts against this state shall be certified by such officers only as are known to the law, and who directed the respective duties and services to be performed for the public ; and said accounts shall also be attested, which attestation shall be subscribed by the party making the demand, and be as follows : “ county: Personally appeared A. B. before me, C. D., who, after being duly sworn, saith that the above (or within) account of dollars, cents, is truly and justly due him from the State of Alabama, and that he has never received any part thereof, either by discount or otherwise, directly or indirectly. Witness my hand, A. B. Sworn to before me, this day of C. D., Justice of the Peace.”

Not to be  
paid until  
made out &  
authentica-  
ted according  
to this law.

§ 3. No account, not made out and authenticated as above directed, shall be paid, until the same is done according to the requisitions of this act.

NOTE.—State claims to be received in payment of county dues.—See “ Taxes,” § 82.

## CLAIMS AGAINST COUNTIES.

1806—(3)

Sec. 6.  
Mode of au-  
diting county  
claims.

§ 1. THE judge of the county court and the commissioners of roads and revenue shall, in term time, audit and allow, on due proof, all accounts and demands legally chargeable upon their respective counties : and every account, or such part thereof as is so allowed, shall be recorded by the clerk in a book to be kept for that purpose ; and the claimant shall receive a warrant on the county treasurer, signed by the clerk, for the amount so allowed ; and the clerk shall number the warrants issued as aforesaid, in each year, beginning at the term first held in each year, and progressing through the same in numerical order ; and shall register the number and amount of each warrant in the aforesaid book.

1823—(9)

Sec. 1.  
Claims to be  
presented  
within 12  
months.

§ 2. All claims, of every description whatsoever, which may be due to any person or persons, or body corporate, from any county in this state, shall be presented for allowance to the competent tribunal, within twelve months after they accrue, or become payable.

Ib. Sec. 2.  
Otherwise,  
to be forever  
barred.

§ 3. All claims, as aforesaid, not presented for allowance as is prescribed in the foregoing section, shall be barred from recovery, both in law and equity : *Provided*, That nothing, herein contained, shall affect the claims of minors, who have no guardians appointed,



and persons *non compos mentis*, until they may be provided for by law, or until twelve months after the removal of such disability.

§ 4. The clerks of the several county courts shall keep a correct list of the amounts of all claims allowed, as is provided for by this act, with the names of the persons to whom granted; which list shall be ready for the inspection and examination of the judges of the respective county courts, and commissioners of revenue and roads, when they assess the county levy, and at all other times when required.

*Id. Sec. 3.*  
Clerks to keep list of claims allowed.

## CLERKS—OF THE CIRCUIT AND COUNTY COURTS.

§ 1. CLERKS of the circuit and inferior courts in the state shall be elected by the qualified electors in each county, for the term of four years, and may be removed from office for such causes, and in such manner, as may be prescribed by law;<sup>1</sup> and should a vacancy occur, subsequent to an election, it shall be filled by the judge or judges of the court in which such vacancy exists; and the person, so appointed, shall hold his office until the next general election: *Provided, however,* That after the year one thousand eight hundred and twenty-six, the general assembly may prescribe a different mode of appointment, but shall not make such appointment.

*Con. Ala. Art. 5. Sec. 15.*  
Elected by the qualified electors.  
*See § 13, 14.*  
Judge to fill vacancy.

§ 2. Every clerk shall, at the time of his admission and qualification, enter into bond, with security, to be approved of by the court, in the penalty of five thousand dollars,<sup>1</sup> payable to the governor and his successors in office, with condition for the due and faithful execution of his office, and that he will not remove, or suffer to be removed out of the county, the records and papers of the court, whereof he is clerk, or any part thereof, except in cases allowed by law; which bond shall be recorded,<sup>2</sup> and then delivered to the presiding judge of the court, and be by him transmitted to the secretary's office, within three months after it is so executed, there to be registered and safely kept among the papers of his office; and may be prosecuted upon, and the penalty thereof recovered, against any such clerk, for any malfeasance in office; and any clerk presuming to execute his office, without first entering into such bond, shall forfeit and pay one thousand dollars, and suffer three months' imprisonment. A copy of such bond shall be good in evidence, and have the same validity as the original, if it were present in court.

1812—(20)  
*Sec. 3.*  
Clerks required to enter into bond.

§ 3. The clerks of the several circuit courts shall give bond, with security, payable to the governor and his successors in office, in the penalty of ten thousand dollars, for the safe-keeping of the records, and the faithful discharge of the duties of their offices; which bond shall be lodged in the office of the secretary of state, and may be put in suit, on the assignment of the governor, by the party or parties injured, in his or their own name, and shall not become void upon the first recovery, but may, from time to time, be put in suit, by action of debt, until the whole penalty be recovered; and if it shall be discovered, that any of the said clerks shall have violated the oath pre-

Penalty for acting without bond.  
Copy may be given in evidence.

1819—(6)  
*Sec. 14.*  
Bond of clerk of circuit court.

Penalty for violating the

<sup>1</sup> Clerks of the *circuit* court are required to give bond in a penalty of ten thousand dollars.—See the next section.

<sup>2</sup> Where the bond is to be recorded.—See "County Officers."



constitution- scribed by the constitution, or willingly, or corruptly have done any  
al oath. thing, contrary to the true intent and meaning of the same, such

clerk shall be deemed, upon conviction, guilty of misbehavior in office, and shall be removed therefrom; and shall forever be incapable of holding any office, civil or military, in the state.

1822—(13)

Sec. 1.  
Bond to be  
given first  
court after  
election,  
or office va-  
cated.

§ 4. All clerks of the circuit and county courts shall enter into bond and security, for the faithful performance of their several duties, as are by law now prescribed, before the person now authorized to take and approve the same, on or before the first day of the term next succeeding their elections, otherwise the said office shall be considered vacant, and the vacancy shall be filled, as heretofore prescribed in other cases of vacancy in the said office.

*Ib.* Sec. 3.  
In case of  
failure,  
judge shall  
require the  
bond in one  
month.

§ 5. If, at any time, it shall be made known to the judge of the circuit or county court, that any person, who has been, or may be appointed, or elected clerk of said county or circuit court, has failed to give bond, with sufficient security, for the faithful performance of his duty, it shall be the duty of said judge, to require said clerk to give such security within one month, or that said office shall be then vacated; and it shall be the duty of such judge, to fill such vacancy as in other cases.

*Ib.* Sec. 7.  
Clerks may  
be required  
to give addi-  
tional secu-  
rity.

§ 6. Any clerk of the circuit or county court, whenever required by the judge of the court whereof he is clerk, shall give such additional security, as may be required by said judge, within one month after notice of such requisition; and in case any clerk shall fail to comply with the provisions herein contained, the office of said clerk is declared vacated thereby, and the vacancy shall be filled, as in other cases provided by law.

1807—(19)  
Sec. 50.  
Clerks to  
make com-  
plete record  
of proceed-  
ings within  
three months  
after final  
judgment.  
Penalty of 20  
dollars for  
failure.  
Parties to  
have access  
to records.

§ 7. It shall be the duty of every clerk of the several courts in this state, within three months after the final determination of any suit, or prosecution, to make up, and enter in well-bound books, to be kept by him for that purpose, a full and complete record of all the proceedings in such suit or prosecution; and every clerk, who shall fail to make and enter a record, as aforesaid, shall forfeit and pay the sum of twenty dollars, to be recovered before any court having jurisdiction thereof, and applied to the use of the state. And in order to secure a due execution of the duty hereby required, the several parties to the suits, or prosecutions, shall, at all times, have a right to inspect said books and records of the court, in the presence of the clerk, in order to see, if the records of the suit, to which he is a party, have been duly made up, according to the directions of this act: and the clerks shall show the said books and records accordingly, under the penalty of fifty dollars, to be recovered, and appropriated to the use of the party so applying and refused.

Fifty dollars  
penalty for  
refusing.

1812—(20)

Sec. 3.  
Clerk to keep  
an execution  
docket.  
What to  
specify.

§ 8. The clerk of every court shall enter in a docket, or book to be kept by him for that purpose, a list of all executions by him issued, specifying therein the names of the parties, the amount of the judgment, interest, and costs, distinctly, in such execution; the name of the person to whom it is delivered, to what county directed, the date when issued, and the return day thereof; and when the same is returned, shall, without delay, record the return at large on the same page, or folio, on which the execution is entered, and shall constantly carry the said book to the court of which he is clerk.

1822—(20)  
Sec. 2.  
Clerk not en-  
tering return  
on execution  
docket, liable  
for amount

§ 9. In case any clerk, of any of the courts of this state, shall fail to enter on the execution docket, any return of any execution, which shall be made by the proper officer of the court, within three days after the said return shall be made, it shall be the duty of the court, on motion of the plaintiff or plaintiffs in execution, or his or her attor-



ney, to render judgment against said clerk, and his securities, or either, or any of them, for the amount of the execution, together with interest and costs: *Provided*, That those against whom the judgment shall be rendered, shall have one day's notice of the motion, and that any fact which shall be contested by said clerk and securities, or any, or either of them, shall be tried by a jury.

§ 10. It shall be the duty of the clerks of the several courts in this state, to keep in the court-house, on the clerk's table, the execution docket, during the whole term of the session of the court; and if any clerk shall fail so to do, he shall be guilty of a contempt of court, and be punished accordingly; and shall also be liable to any person aggrieved, in an action of trespass on the case.

§ 11. It shall not be lawful for the court of any county, or the clerk of such court, to remove, or cause to be removed, the records and papers of the same, or any part thereof, without the county, except in cases of actual invasion, or insurrection, where, in the opinion of the court, the same will be endangered; or where, for want of such opinion, by the suddenness of the alarm, or danger, the clerk shall, at his own discretion, remove the same, returning them as soon as the alarm or danger ceases; or except in cases also provided for by law. Any member of a court, or the clerk of the same, so offending herein, shall be deemed guilty of a misdemeanor in office, and forfeit therefor and pay the sum of one thousand dollars.

§ 12. Whenever the office of clerk to any court shall become vacant, by any cause whatsoever, the records, papers, books, stationery, and every thing belonging or appertaining to the same, shall be delivered over to the successor in office, by the person or persons having the same, whenever demanded, under the penalty of five thousand dollars, to be recovered against such person, and every one of them, so detaining the same, or any part thereof; and it is hereby declared to be the duty of such successor, to demand, receive, and take into his care and safe keeping, all the books, records, papers, stationery, and every other matter and thing, appertaining to the said office; and in case of refusal or detention of them after demand, as aforesaid, he shall give information thereof, to the attorney general or solicitor of the circuit, who shall prosecute accordingly.

§ 13. If any clerk of any court in this state, shall willingly make any false entry, interlineation, or erasure of a letter, or change any record in his keeping belonging to his office, or shall neglect to record any will, deed, or other matter proper to be recorded in his office, within a reasonable time after the same shall have been lodged in his office to be recorded; or shall neglect to make out and keep a fair and correct index to the matters recorded in each book; or shall neglect to keep in regular file all the papers belonging to his office, keeping every subject matter in its proper and peculiar file, and the papers of each suit together; or shall refuse or neglect to make out, in a reasonable time after application of any person demanding the same, a transcript of any record in his office; or shall make out the same so erroneously or incorrectly that the court to which it is taken cannot proceed thereon; or shall refuse or neglect to perform any of the duties required by law to be performed by such clerk; such clerk shall, upon trial and conviction, be deemed guilty of a misbehavior in office, and shall be subject to a fine not exceeding two hundred dollars, or be removed therefrom by the court, and shall also be liable to an action on the case for damages, in behalf of the party aggrieved.

of execution, &c.

Notice of motion. Contested facts.

*Id.* Sec. 3. Execution docket to be kept on clerk's table during the whole court.

1812—(20)  
Sec. 4. Records not to be removed from the county unless in danger.

*Id.* Sec. 9. Records to be delivered over to successor.

Successor's duty to demand, &c.

1819—(21)  
Sec. 1. Clerks liable to fine or removal for neglect, malpractice, &c.



*Ib. Sec. 3.*  
Charges,  
how exhibit-  
ed and tried.

§ 14. All charges against clerks, for misbehavior in office, shall be exhibited to the court in writing, and the court shall direct the facts to be tried by a jury; and on conviction thereof, such clerk shall be fined or removed from office, as the court of which he is clerk shall think proper: *Provided*, That every clerk, against whom charges may be exhibited, shall be entitled to a copy thereof, and shall be permitted to make his defence on trial.

1830—(18)  
*Sec. 1.*  
Clerks offi-  
ces to be ex-  
amined bi-  
ennially.  
<sup>a</sup> *January*  
20, 1830.

§ 15. It shall be the duty of the judges of the circuit and county courts of this state, at the first term of their court, which shall be held in each county after the passage of this act,<sup>a</sup> and biennially thereafter, to appoint one or more persons, not exceeding three, learned in the laws, to examine the offices of their respective courts.

*Ib. Sec. 2.*  
Examiners'  
oath and  
duties.

§ 16. The person or persons so appointed, shall take and subscribe an oath, well and truly to examine into the records of said courts, the fee-books kept by the clerks thereof, and make a true return of the general state of said offices; and shall, in the vacation after the said court, examine said offices, and report the general state of the same to the next court thereafter:—and if on such examination, any misfeasance or malfeasance shall be discovered, it shall be particularly specified in said report: which report when made, shall be recorded in the clerk's office of said court, and shall be subject to the inspection of any person without fee.

Misfeasan-  
ces to be par-  
ticularly spe-  
cified in ex-  
aminers' re-  
port.  
Report to be  
recorded.

§ 17. The persons so appointed shall receive such compensation for their services, as may be allowed them by the judge of the county court, and commissioners of revenue and roads.

*Ib. Sec. 3.*  
Examiners'  
compensa-  
tion.

1832—(24)  
*Sec. 1.*  
Annual al-  
lowance to  
clerks for  
books and  
stationery.

§ 18. The judges of the county courts, and commissioners of revenue and roads, are hereby authorized to make an allowance to the clerks of the county and circuit courts, for books and stationery purchased by them for the use of their offices, respectively.

1836—(20)  
*Sec. 3.*  
Deputy-  
clerks may  
perform the  
duties of  
principal.

§ 19. All deputy-clerks, of any of the clerks of this state, shall have full power and authority to transact all business in the absence of the principal, which the principal could do, were he present, and performed the same himself, first, taking an oath to support the constitution and laws of the state, and faithfully to discharge the duties of deputy-clerk of the court in which he acts.

1834—(12)  
*Sec. 1.*  
Clerks of the  
county  
courts to re-  
port all licen-  
ses granted to  
county  
treasurer.

§ 20. It shall be the duty of the clerk of the county court in each county, to render, on or before the first Monday in November in each year, to the county treasurer of his county, a report on oath, in writing, of all the licenses granted by the county court, together with all the licenses, that he may have issued to hawkers and pedlers, from which any revenue may have accrued to the county, from the time of giving in the same the preceding year.

*Ib. Sec. 2.*  
Clerks of  
circuit  
courts to re-  
port to coun-  
ty treasurer.

§ 21. It shall, in like manner, be the duty of the clerk of the circuit court in each county, to render to the county treasurer of his county, on or before the first Monday in November in each and every year, a report on oath, in writing, of all money, which he may have collected by virtue of his office, and which is due to his county.

*Ib. Sec. 3.*  
Penalty.

§ 22. If any clerk shall fail or neglect to make such report to the county treasurer of his county, on or before the first Monday in November in each and every year, he shall forfeit and pay the sum of five hundred dollars, to be recovered on motion of the county treasurer to the county or circuit court, on giving to the clerk one day's notice of such motion, and the court shall render judgment against the clerk and his securities, or any or either of them.

*Ib. Sec. 4.*  
Penalty for  
refusing to

§ 23. Should any clerk neglect or refuse to pay to the county treasurer of his county, the amount of money, so reported by him to



be due to his said county, it shall be the duty of the county treasurer, to proceed against such clerk, by motion in the county or circuit court, as prescribed in the third section of this act, and the court shall render judgment against the clerk and his security, or any or either of them, for the amount of money reported to be due to the county, together with ten per centum upon the amount, as damages.

§ 24. In all cases, where money shall be paid to the clerk of any court, the party, entitled to receive it, shall have the same remedy for its recovery, and the same damages for its detention, as are now provided and allowed by law, for money paid to clerks on execution, and it is hereby expressly made the duty of all clerks, to receive and account for all such sums of money, as may be paid to them by either party, as well after as before the issuance of execution.

*Ib. Sec. 5.*  
Remedy  
against  
clerks.

§ 25. All laws, contravening the provisions of this act, are hereby repealed: *Provided, always,* That no judgment shall be rendered against any security or securities of a clerk, as contemplated and provided for by this act, unless one day's previous notice be given to such security or securities, that a motion will be made for that purpose.

*Ib. Sec. 6.*  
Security of  
clerk to  
have one  
day's previ-  
ous notice of  
motion.

§ 26. When any judgment, from a circuit or county court in this state, shall be reversed by the supreme court, if it shall appear, from an inspection of the transcript of the record, that the defect in the proceedings of the court below, on account of which such judgment is reversed, was occasioned by the negligence or carelessness of the clerk of such court, said supreme court may forthwith render such judgment against said clerk, as is now required, by law, to be rendered against the defendant in error, for the costs of the supreme court.

1840—(11)  
Sec. 1.  
In what  
cases clerks  
of circuit &  
county  
courts liable  
for costs, on  
reversal of  
judgments  
entered by  
them.

§ 27. It shall not be lawful, for the clerk of the circuit or county court of any county in this state, to charge for the examination of the books and papers in his office, when the person or persons, desiring to make such examination, is the executor, administrator, or other person, as the representative of the executor or administrator, of any deceased clerk.

1840—(12)  
Sec. 1.  
Clerks not to  
charge execu-  
tor, &c. of  
deceased  
clerk for ex-  
amining  
books.

§ 28. All laws, contrary to the provisions of this act, are hereby repealed: *Provided,* That the provisions of this act shall not extend to the county of Mobile, or the county of Russell.

*Ib. Sec. 2.*  
Mobile and  
Russell ex-  
cepted.

§ 29. If the clerk of any of the courts of record of this state, shall fail or refuse, on application of the plaintiff or party interested, or his attorney or agent, to issue a proper writ of execution, on a judgment rendered in the court of which he may be clerk, such clerk may be proceeded against on motion, and made liable to said plaintiff or party interested, in the same manner and for the same amount as sheriffs may now, by law, be made liable, in cases of failure by them to make due return of executions: *Provided,* That if a writ of execution shall have been duly issued on such judgment, within twenty days after the rendition thereof, and the sheriff shall, in proper time, have returned thereon, that there was no property to be found in his county, out of which to satisfy such execution, then no clerk shall be made liable as hereinbefore provided, unless the party applying for execution, shall first pay, or tender to such clerk, the costs that may be lawfully charged thereon.

1840—(13)  
Sec. 1.  
Penalty for  
failing to is-  
sue execu-  
tion, on ap-  
plication of  
party inter-  
ested.

*Proviso.*

§ 30. It shall be the duty of the secretary of state, and the different clerks of the county courts of this state, to inform the solicitors of the different circuits, from time to time, of the different officers,

1843—(12)  
Sec. 1.  
Secretary of  
state and  
clerks to in-  
form solici-



tors of officers' failure to give bond.

*Ib. Sec. 2.*  
Solicitors to file *quo warranto* vs. delinquent officer.

*Ib. Sec. 3.*  
Penalty on secretary & clerks for failure to perform duty above named.

*Ib. Sec. 4.*  
Penalty on state officers for failure to give bond.

*Ib. Sec. 5.*  
This act to be given in charge to grand juries 1843—(13)

*Sec. 5.*  
No sheriff, or county or circuit court clerk, shall deal in claims vs. county. Penalty.

who have failed, or may hereafter fail, to give and file their bonds in their respective offices, as now required by law.

§ 31. It shall be the duty of the several solicitors, on receiving information of such delinquency, whether directly from the officers aforesaid, or otherwise, to file information, in the nature of a *quo warranto*, against such officers, so failing to give bond, and shall prosecute the same to judgment.

§ 32. If the secretary of state, or either of the clerks aforesaid, shall fail to comply with the provisions of this act, he or they shall be liable to indictment, and, on conviction, shall be fined in a sum not less than one hundred dollars, for every month that they may so fail to give the information required.

§ 33. Any officer in this state, civil or executive, who shall fail to give and file his bond, as now required by law, or any officer aforesaid, who has failed, and continues to fill his respective office, without so giving bond, as now required by law, shall be liable to indictment, and, on conviction, be fined in a sum not less than five hundred dollars, at the discretion of the jury trying the same.

§ 34. It shall be the duty of the several circuit judges, from time to time, to give this act in charge to the different grand juries in this state.

§ 35. It shall not be lawful for any sheriff, clerk of the county or circuit courts, or their assistants or deputies, or any other county officer, to purchase or otherwise deal, directly or indirectly, in the certificates of witnesses or jurors, or other evidences of charges against the county, and, in case of any violation of this act, the same shall be deemed a sufficient cause of removal from office.

NOTE.—By act of 1815, the county court was empowered to allow clerks, annually, for their services, not exceeding fifty dollars, out of the county treasury,—See "County Officers,"—§ 1.

#### CLERK OF THE SUPREME COURT.

1825—(1)  
*Sec. 1.*  
How appointed, and term of office.

*Ib. Sec. 2.*  
To give bond.

*Ib. Sec. 4.*  
Judges to fill vacancy.

*Ib. Sec. 5.*  
Clerk to keep his office at Tuscaloosa.

1823—(31)  
*Sec. 1.*  
Clerk of su-

§ 36. The judges of the supreme court of the state of Alabama, are hereby authorized to appoint a clerk of the supreme court, who shall hold his office during five years, but be removable at any time for misbehavior in office, two-thirds of the judges of the supreme court concurring in such removal.

§ 37. All clerks of the supreme court, who may hereafter be appointed, shall execute a bond with good and sufficient security, to be approved of by the judges of the said court, and in such sum as they, or a majority of them, may direct, conditioned for the faithful performance of the duties of said office: *Provided, nevertheless,* That a majority of said judges may, at any time, require said clerk to give additional or other security; and if said clerk shall fail so to do within a reasonable time, to be prescribed by the court, the said office shall be thereby vacated.

§ 38. A majority of the said judges may, at any time, fill any vacancy in said office of clerk, and shall, or some one of them shall, administer such oaths of office, as may be prescribed by law, to said clerk, previous to his entering on the duties of his office.

§ 39. The clerk of the supreme court shall, within three months after the passage of this act, establish his office at Tuscaloosa; at which place the said office shall be kept and remain, so long as the seat of government shall continue at said place.

§ 40. The office of the clerk of the supreme court shall be kept open, during the whole of each day, (Sundays excepted,) for the



purpose of doing all necessary business with members of the bar, or the persons having lawful business therein; any rule of said clerk, prescribing *office hours*, to the contrary notwithstanding.

§ 41. If any clerk shall refuse admittance into said office, to any person or persons having lawful business to transact in said office, at any time, without a reasonable cause, to be judged by the court, such clerk shall be fined in any sum not exceeding twenty dollars.

preme court  
to keep his  
office open  
the whole  
day.  
Ib. Sec. 2.  
Penalty for  
refusing ad-  
mittance.

## COMMISSIONERS OF REVENUE AND ROADS.

§ 1. EVERY third year at the general election, there shall be elect- ed, in each county in this state, four commissioners of the revenue and roads, any two of whom, together with the judge of the county court, shall constitute a court, to levy the county tax, to lay out and discontinue roads, and shall have and exercise all the power in relation to roads, bridges, highways, ferries, and causeways, which are at present given to, and exercised by, the orphan's or county court; and make the appointment of such county officers, as by law are directed to be appointed by the county court.

1821—(4)  
Sec. 28.  
Four to be  
elected in  
each county.

Powers.

§ 2. On the first Mondays in *February* and *May*, *the third Monday in August*, and the first Monday in *December*, in every year, the judges of the several county courts in this state, together with the commissioners of revenue and roads, of their respective counties, or with any two of them, shall hold a court for the purposes prescribed in the foregoing section, and the said judge and commissioners shall continue in session, until the business is completed: *Provided, nevertheless*, If said commissioners shall fail to attend, on or before the third day of said term, the judge of said county shall proceed to levy the tax, and appoint the officers required by law.

1821—(28)  
Sec. 1.  
[a 1824—(27)  
Sec. 2.]  
When to  
hold court.

Judge may  
do business,  
if commis-  
sioners do  
not attend.

§ 3. The judges of the county courts, together with the commissioners aforesaid, or a majority of them, shall have control over the funds in the county treasury; and they, or a majority of them, shall have power to make appropriations for defraying expenses incurred for county purposes: *Provided*, Nothing, herein contained, shall be so construed, as to authorize said courts to do any other than county business, at the several terms provided to be holden by this act.

Ib. Sec. 3.  
To have con-  
trol of coun-  
ty funds.

§ 4. When any vacancy happens, by resignation or otherwise, in any office, the appointment of which is vested in the county court, it shall be lawful for the judge of said court, and the commissioners of roads and revenue, to make the appointment between the terms of court, and the appointment shall be as valid as if made at the regular term.

1821—(24)  
Sec. 5.  
May make  
appoint-  
ments be-  
tween terms  
of court.

§ 5. No commissioner of revenue and roads shall be eligible to the appointment of assessor or tax collector, or shall discharge the duties thereof, either as principal or agent, in any manner whatever, during his continuance in office.

1822—(11)  
Sec. 10.  
Not eligible  
to office of  
tax collector

§ 6. The commissioners of revenue and roads shall be commissioned in the manner hereinafter prescribed.

1823—(23)  
Sec. 1.  
Commission-  
ers to be  
commis-  
sioned

§ 7. Within five days after each election, it shall be the duty of the sheriff of each county, to return to the judge of the county court, a list of the four persons having the greatest number of votes, whose duty it shall be to commission them: and the persons, so commissioned, shall, before they proceed to the discharge of their duties, take and subscribe the following oath, to wit: "I, , do

Ib. Sec. 2.  
by judge of  
county court  
To take oath  
, do



solemnly swear, (or affirm, as the case may be,) that I will faithfully discharge the duties imposed on me as a Commissioner of Revenue and Roads, for the county of : So help me God."

*Ib. Sec. 3.*  
Vacancies,  
how filled.

§ 8. Should a vacancy occur, the judge of the county court, together with the commissioners of revenue and roads in office, are hereby authorized and required to fill such vacancy; and the person so appointed, shall hold his office, until the next stated election for commissioners.

*Ib. Sec. 5.*  
Exempt  
from certain  
duties.

§ 9. Commissioners of revenue and roads shall be exempt from serving on juries, working on roads, and performing ordinary militia duty, during the time they act as such.

1827—(6)

*Sec. 8.*

To serve 3

years.

1840—(14)

*Sec. 1.*

May hold  
court on first  
day of term,  
in absence  
of judge.

§ 10. The commissioners of roads and revenue shall be elected for the term of three years.

§ 11. It shall be lawful for the commissioners of roads and revenue, in each and every county in this state, to hold their respective courts, notwithstanding the absence of the judge or judges of the county courts, on the first day of their regular terms.

## COMMISSIONS.

*Con. Ala.*  
*Art. 4.*  
*Sec. 13.*

§ 1. ALL commissions shall be in the name, and by the authority of the state of Alabama, be sealed with the state seal, signed by the governor, and attested by the secretary of state.

## CONTEMPTS.

Preamble.

WHEREAS, the government of this state is instituted for the peace, protection, and happiness of the people thereof; and it being contrary to these objects, that any man, or body of men, should have, or exercise in any case, an unlimited, arbitrary power to fine and imprison for offences against him or themselves, in any capacity whatever: *And whereas*, the trial by jury in all penal, as well as criminal cases, is both a safe and adequate mode of investigation and decision, and should only be suspended in cases of absolute necessity :

1807—(19)

*Sec. 2.*

Contempt of  
court, how  
punished.

§ 1. *Be it enacted*, That no court shall, for any contempt against such court, pass judgment or decree, order, or inflict, or cause to be inflicted, any fine exceeding the sum of twenty dollars, nor any imprisonment exceeding twenty-four hours, without the trial by jury, to assess the amount of such fine, and determine the duration of such imprisonment.

*Ib. Sec. 3.*  
Contempt of  
judge or jus-  
tice,

how punish-  
ed.

§ 2. No judge, for any contempt offered to him, shall have power to order and inflict, or cause to be inflicted, any fine exceeding the sum of six dollars, nor any imprisonment exceeding six hours. And if any court, or judge, shall offend herein, the person or persons so offending, shall be deemed guilty of a misdemeanor in office; and shall, moreover, be subject to the action of the party injured, for damages, to be assessed by a jury. And in all cases of trial by jury for any contempt, the truth of the matter may be given in evidence, by the defendant, on the general issue.



§ 3. The foregoing restrictions are not intended, nor shall they be construed, to affect cases arising under the militia laws; nor causes where a party, served with process from any court, judge, or justice, shall refuse to answer according to law, or to perform any decree, judgment, or order of the same.

*Id. Sec. 4.*  
To what cases this law does not apply.

§ 4. No justice of the peace, for any contempt offered to him, shall have power to order or inflict, or cause to be inflicted, any fine exceeding the sum of six dollars, nor any imprisonment exceeding six hours, and then only when such contempt shall be offered, whilst such justice is sitting in judgment; and if any justice of the peace shall offend herein, he shall be deemed guilty of a misdemeanor in office, and shall, moreover, be subject to the action of the party injured, for damages, to be assessed by a jury.

1814—(17)  
*Sec. 24.*  
Justice's power to fine and imprison for contempts.

§ 5. The power of the several courts of record of this state, to issue attachments and inflict summary punishments, for contempts of court, shall not be construed to extend to any cases, except the misbehavior of any person or persons in the presence of said courts, or so near thereto, as to obstruct the administration of justice; the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance of any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of said courts.

1834—(13)  
*Sec. 1.*  
Power of the courts to punish for contempts, limited.

§ 6. If any person or persons shall, corruptly, or by threats or force, endeavor to influence, intimidate, or impede, any juror, witness, or officer, in any of the courts aforesaid in the discharge of his duty, or shall, corruptly, or by threats, or force, obstruct or impede the due administration of justice therein, every person or persons, so offending, shall be liable to prosecution therefor by indictment, and shall, on conviction thereof, be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding three months, or both, in the discretion of the jury trying the offence.

*Id. Sec. 2.*  
Contempt to attempt to impede the administration of justice.

NOTE.—For contempts offered to the general assembly, while in session, by any person not a member, the offender may be punished by imprisonment, not exceeding forty-eight hours.—See "General Assembly."—Con. Art. 3, sec. 17.

## CONVEYANCES.

§ 1. If any deed or conveyance of lands, tenements, or hereditaments, lying and being in this state, heretofore made and executed, and not already acknowledged or proved according to law, or hereafter to be made and executed, shall be acknowledged by the party or parties, who shall have executed it; or be proved by one or more of the subscribing witnesses to it, that such party or parties signed, sealed, and delivered the same, as his, her, or their voluntary act and deed, before one of the judges of the superior courts of this state, or judge of the county court of that county, in which the lands, tenements, or hereditaments are situated; and if a certificate of such acknowledgment or proofs shall be written upon, or under the said deed or conveyance, and be signed by the person before whom it was made, then every such deed or conveyance, so acknowledged or proved, and certified, shall be received in evidence in any court

1803—(3)  
Conveyances acknowledged or proved, to be received in evidence.



of this state, as if the same were then and there produced and proved. (1)

Not to be recorded without proof.

§ 2. No conveyance of lands, tenements, or hereditaments, lying and being in this state, which has been made and executed, and not already acknowledged or proved according to law, or which shall be made and executed, shall be recorded in any clerk's office in this state, unless the execution of the same shall have first been acknowledged, or proved and certified, in the manner herein directed.

*Ib. Sec. 4.*  
When conveyor and witnesses are non-residents.

§ 3. If the party, who shall execute any deed or conveyance of lands, tenements, or hereditaments, lying and being in this state, or the witness thereto, reside not in this state, but in some other territory or state in the Union; then the said acknowledgment or proof, made before, and certified by the chief justice of the United States, or any associate justice of the supreme court of the United States, or a district judge of the same, or any judge or justice of the supreme or superior court of any territory or state in the Union, shall be as good and effectual, as if it had been made before, and certified by one of the judges of the superior court of this state.<sup>1</sup>

*Ib. Sec. 5.*  
Where they reside in a foreign kingdom.

§ 4. If the party, who shall execute any deed or conveyance of lands, tenements, or hereditaments, lying and being in this state, or the witness thereto, reside in a foreign kingdom, state, nation, or colony; then the said acknowledgment or proof, made before any court of law, or mayor, or other chief magistrate of any city, borough, or corporation of the said foreign kingdom, state, nation, or colony, in which the said party or witnesses reside, certified by the said court, mayor or chief magistrate, in the manner such acts are usually authenticated by them, or him, shall be as good and effectual, as if it had been made before, and certified by one of the judges of the superior court of this state.

*Ib. Sec. 6.*  
Foregoing provisions include acknowledgments by married women.

§ 5. The two preceding sections of this act shall be construed to extend to, and comprehend acknowledgments of deeds or conveyances, which shall be made by *femes covert* who reside out of this state, and in any other territory, or state in the Union; or in any foreign kingdom, state, nation, or colony.

*Ib. Sec. 8.*  
When grantor or witness is dead, how proved.

§ 6. *And whereas*, it is necessary that provision should be made for proving deeds or conveyances of lands, tenements, or hereditaments, where the grantors and witnesses are dead: *Therefore, be it enacted*, That if the grantor, or witnesses, of any such deed or conveyance be dead, or cannot be obtained, it shall be lawful for any of the officers hereinbefore mentioned, as the case may require, to take, under oath or affirmation, the examination of any person or persons, to prove the hand-writing of such deceased witness or witnesses; or where such proof cannot be had, then to prove the hand-writing of such grantor or grantors, which shall be certified on, or under such deed or conveyance, and signed by the officer before whom such proof shall have been made; and such deed or conveyance, so proved and certified, shall be received in evidence, and be recorded by the clerk of the county court of the county in which the said lands, tenements or hereditaments are situated, in the same manner as other deeds or conveyances are directed by this act.

1812—(13)  
Sec. 1.

§ 7. Any deed or conveyance of real estate may be admitted to

(1) A deed of conveyance for land, though not attested by a subscribing witness, nor recorded, may nevertheless, on proof *alimunde*, be read in evidence.—Roberts & Barnwell v. Kennedy & Kitchens,—1 *Stent. Rep.* 245.

<sup>1</sup> See "Depositions," § 9.



record, if acknowledged by the maker or makers thereof, or be proved by any of the subscribing witnesses thereto, before any one of the superior judges, or judge of any county court in this state; and the following shall be the form of the certificate of acknowledgment, or probate of all deeds, to wit:

*"The State of Alabama—ss.*

Personally appeared before me, \_\_\_\_\_ esquire, a judge of the circuit court, (or judge of the county court of said county, as the case may be,) the above named A. B. who acknowledged that he signed, sealed, and delivered the foregoing deed, on the day and year therein mentioned, to the aforesaid C. D. Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_:

and in case of probate, by a subscribing witness, thus; (as above to the end of the description of the judge) "the above named E. F., one of the subscribing witnesses to the foregoing deed, who being first duly sworn, depose and saith, that he saw the above named A. B., whose name is subscribed thereto, sign, seal, and deliver the same to the said C. D.; that he, this deponent, subscribed his name, as a witness thereto, in the presence of the said A. B.; and that he saw the other subscribing witness (or witnesses, naming them as the case may be) sign the same in the presence of the said A. B., and in the presence of each other, on the day and year therein named. Given under my hand and seal," &c.

§ 8. Any deed of real estate lying in this state, made or executed by any person or persons residing without the limits of the same, may be admitted to record in the clerk's office, of the county where such estate may lie, if acknowledged or proved in the manner required by this act, before any judge or justice of any court, or notary public, of the state or territory, in which the maker of such deed may be: *Provided*, That the certificate of such acknowledgment or probate shall be accompanied by a certificate of the clerk of the court, to which such judge or justice may belong, that such judge or justice is of such court, and that due faith and credit is to be given to any act done by them, when acting in their official character; and the seal of office, if any there be, shall be affixed to such certificate.

§ 9. Any certificate of probate or acknowledgment of any such deed shall be good and effectual, if it contain the substance, whether it be in the form or not, of that set forth in the first section of this act.

§ 10. Hereafter, the clerks of the several superior and county courts in this state, may lawfully take and certify acknowledgments of deeds of conveyance of real estate, and relinquishments of dower, within their respective counties, in like manner and form as is now required by law, before judges of the superior and county courts.

§ 11. For every certificate so made, the said clerks and judges of the county court shall be allowed a fee of fifty cents, to be paid by the party at whose instance the same was made.

§ 12. Judges of the circuit and county courts respectively, may take acknowledgments of deeds and relinquishments of dower, in the same manner now provided by law.

§ 13. All acknowledgments of deeds and relinquishments of dower, which have been heretofore made before judges of the circuit courts, or justices of the county courts, respectively, are hereby legalized and made valid to all intents and purposes whatever.

§ 14. The clerks of the circuit courts of the several counties of this state may take and certify the acknowledgment or proofs of deeds, and relinquishments of dower, whether the lands, tenements,

Deeds may be acknowledged or proved before superior judge, or judge of the county court. Form of certificate of acknowledgment.

Form of certificate of probate.

*Ib. Sec. 2.* Deeds executed out of the state may be admitted to record in the county where the land lies.

Certificate to accompany probate, &c.

*Ib. Sec. 3.* Such certificate valid, though informal.

1818—(13) Sec. 1. Deeds and relinquishments of dower may be acknowledged before clerks.

*Ib. Sec. 2.* Fee 50 cents.

1820—(17) Sec. 1. Judges to take acknowledgments, &c.

*Ib. Sec. 2.* Acknowledgments heretofore made, legalized.

1831—(1) Sec. 1. Clerks of circuit court



may take acknowledgment, &c., whether lands lie in their own county or not.

*Ib. Sec. 2.*  
Notaries public to have like power with judges, &c., in taking acknowledgments.

*Ib. Sec. 3.*  
Acknowledgments heretofore made, legalized.

1823—(8)  
*Sec. 3.*  
Deeds acknowledged before justices and judges, legalized.

*Ib. Sec. 2.*  
Deeds void against *bona fide* purchaser, unless recorded in six months after their execution.

Proviso.

1826—(9)  
*Sec. 2.*  
Record destroyed, deeds may be recorded again in 18 months.  
1831—(3)  
*Sec. 1.*  
Deeds recorded at any time to be valid thenceforth.

1803—(3)  
*Sec. 9.*  
Clerk of county court to record all deeds delivered to him.

or hereditaments, therein expressed, be situated in the said county or elsewhere, in this state; which said acknowledgment or proof of deeds, and relinquishment of dower, shall have the same construction and effect, and be as good and available in law, as if such acknowledgment or proof, and relinquishment of dower, had been made before a judge of the circuit or county court, a clerk of the county court, or a justice of the peace; and for every certificate so made, the said clerk shall be entitled to a fee of fifty cents, to be paid by the party at whose instance the same was made.

§ 15. Any notary public of this state may take and certify the acknowledgments or proofs of deeds, and relinquishments of dower, in any county for which he is commissioned, in like manner and form, as is now required by law, before judges of the circuit and county courts, clerks of the county courts, and justices of the peace, and shall be entitled to the like compensation.

§ 16. All acknowledgments of deeds, or proof of deeds of conveyance of real estate, and relinquishments of dower, which have been heretofore made before any clerk of any one of the circuit courts of this state, or any notary public, duly commissioned within the same, are hereby legalized and made valid, to all intents and purposes whatever.

§ 17. Any deed or deeds of lands, heretofore acknowledged or proved before any justice of the peace, shall be valid and operative under the provisions of this act, and the same are hereby legalized: and any deed or deeds for lands, heretofore acknowledged, or proved, before any justice of the peace, judge of the county court, or judge of the circuit court, shall be valid and operative: *Provided*, That nothing, herein contained, shall be so construed, as to prejudice the rights of persons not a party to any such deed or deeds.

§ 18. Any deed or conveyance of lands, tenements, or hereditaments, lying and being in this state, which shall be made and executed after the passage of this act, shall be void and of no effect against a subsequent *bona fide* purchaser, or a mortgagee, for a valuable consideration, not having notice thereof, unless such deed or conveyance shall be acknowledged, or proved and certified, and lodged, within six calendar months after the time of signing, sealing, and delivering the same, with the clerk of the county court, in the county in which the said lands, tenements, or hereditaments are situated, to be recorded by the said clerk: *Provided*, nevertheless, That such deed or conveyance shall, as between the parties and their heirs, be valid and operative.

§ 19. All deeds and conveyances of lands, tenements, and hereditaments, the record of which may have been, or may hereafter be, destroyed by any casualty, may again be entered of record within eighteen months thereafter.

§ 20. All deeds, which have been recorded, or shall hereafter be recorded, after the time limited by law, shall be considered and taken, in law and equity, as valid and effective, from the time of their registration: *Provided*, That registration, as herein allowed, shall not affect the rights of creditors and purchasers, which have or shall have vested, in law or equity, previous to such registration.

§ 21. The clerk of the county court shall record in large well-bound books, of good paper, to be provided for that purpose, and carefully preserve, all deeds and conveyances of lands, tenements, and hereditaments lying and being in said county, acknowledged or proved, and certified to have been acknowledged or proved, in manner aforesaid, which shall be delivered to him to be recorded; to



which books every person shall have access at proper seasons, and be entitled to transcripts from the same, on paying the fees allowed by law.

§ 22. It shall be the duty of the clerk, to record in the said book, without delay, every such deed or conveyance, with the acknowledgments, proofs, and certificates, written on or under the same, and the plats of surveys, schedules, and other papers, therein referred to and annexed, by entering them word for word in a fair hand, and mentioning in the margin, or at the foot of such record, the day of the month, and the year, when the said deed or conveyance was delivered to him, or brought to his office to be recorded.

*Ib. Sec. 10.*  
Mode of  
making re-  
cord.

§ 23. The said clerk shall give a receipt, to the person who shall bring any such deed or conveyance, mentioning therein the time it was delivered to him, or brought to his office to be recorded, the date, the names of the parties to it, and the place where the lands, tenements, and hereditaments therein specified, are situated: the said clerk shall certify on or under such deed or conveyance, the day of the month and year, when he received it, and the name or number of the book and page or pages, in which it is recorded; and shall, when recorded, deliver it to the party entitled to it, or his order.

*Ib. Sec. 11.*  
Clerk to give  
receipt, &c.

§ 24. If any clerk shall neglect or refuse to perform any service or duty required of him by this act, he shall, for every neglect or refusal, forfeit and pay two hundred dollars; to be recovered, with costs, by action of debt, to be brought in the name of the county treasurer, for the use of the county; and shall also be liable for all damages, which the party aggrieved may have sustained by reason of the non-performance of such service or duty.

*Ib. Sec. 12.*  
Penalty for  
neglect.

§ 25. If the original deed or conveyance be lost or mislaid, or be destroyed by time or accident, and not in the party's power to produce, the record of such deed or conveyance, and the transcript of such record, certified to be a true transcript, by the said clerk in whose office the record is kept, shall be received in evidence, in any court in this state, and be as good and effectual, and available in law, as if the original deed or conveyance were then and there produced and proved.

*Ib. Sec. 13.*  
Certified  
transcript to  
be evidence  
when the  
original is  
lost.

§ 26. No record shall be removed by writ of subpoena, or otherwise, before any court out of the county in which such record is kept, when a transcript thereof may be given in evidence.

*Ib. Sec. 17.*  
Record not  
to be remo-  
ved out of  
county.

§ 27. No estate of a *feme covert*, in any lands, tenements, or hereditaments, lying and being in this state, shall pass by her deed or conveyance, without a previous acknowledgment made by her on a private examination, apart from her husband, before one of the superior judges, or a judge of the county court, that she signed, sealed, and delivered the same, as her voluntary act and deed, freely, without any fear, threats, or compulsion of her husband, and a certificate thereof, written on or under the said deed or conveyance, and signed by the officer before whom it was made; and every deed or conveyance so executed and acknowledged by a *feme covert*, and certified as aforesaid, shall be good and effectual to convey the lands, tenements, and hereditaments thereby intended to be conveyed: *Provided*, That this clause shall not be construed to enable any *feme covert*, under the age of twenty-one years, to convey lands, tenements, or hereditaments, or any right, interest, or estate therein.

*Ib. Sec. 3.*  
Estate of  
married wo-  
men.

§ 28. It shall be lawful in such cases, when deeds have been recorded, and the *feme covert* hath not relinquished her right of dower in the same, for her to relinquish her right of the lands so deeded,

Under 21,  
not to convey

1812—(13)  
Sec. 11.  
Wife may  
relinquish



dower after deed is recorded.

before any judge of the circuit or county courts of this state, or any judge or justice of any court, or notary public of any other state or territory; and such officer, having previously examined her as required by law, shall certify the same under his hand, which certificate shall be recorded in the court, where the deed or deeds may have been recorded, which shall be deemed sufficient.

1803—(3)  
Sec. 18.  
Grant, &c.  
effectual  
without at-  
tornment of  
tenant.

§ 29. Every grant or conveyance of messuages, lands, tenements, and hereditaments, or of rent, or of reversion, or remainder of messuages, lands, tenements, and hereditaments, shall be good and effectual without attornment of the tenant; but no tenant, who, before notice of such grant or conveyance, shall have paid the rent to the grantor, shall be prejudiced, or suffer any damage by such payment.

Ib. Sec. 19.  
Warranties.

§ 30. All warranties by any tenant for life shall be void against those in remainder or reversion.

Ib. Sec. 20.  
What words  
shall amount  
to an express  
covenant.

§ 31. In all deeds to be recorded in pursuance of this act, whereby any estate of inheritance, in fee simple, shall hereafter be limited to the grantor or his heirs, the words, grant, bargain, sell, shall be adjudged an express covenant to the grantee, his heirs and assigns, to wit: that the grantor was seized of an indefeasible estate in fee simple, freed from incumbrances, done or suffered from the grantor, (except the rents and services that may be reserved) as also for quiet enjoyment against the grantor, his heirs and assigns; unless limited in express words contained in such deed: and the grantee, his heirs, executors, administrators, and assigns, may in any action, assign breaches, as if such covenants were expressly inserted: *Provided, always,* That this law shall not extend to leases at rack-rent, or to leases not exceeding one-and-twenty years, where the actual possession goes with the lease.

Ib. Sec. 22.  
Discharge of  
mortgage.

§ 32. Any mortgagee of any real or personal estate, in this state, having received full satisfaction and payment of all such sum or sums of money as are really due to him by such mortgagor, shall, at the request of the mortgagor, enter satisfaction upon the margin of the record of such mortgage, recorded in the said office, which shall, forever thereafter, discharge, defeat, and release the same; and shall, likewise, bar all actions brought, or to be brought thereupon. And if such mortgagee, by himself or his attorney, shall not, within three months after request and tender made for his reasonable charges, repair to the said office, and there make such acknowledgment, as aforesaid, he or she, neglecting so to do, shall, for every such offence, forfeit and pay unto the party or parties aggrieved, any sum not exceeding the mortgage money; to be recovered in any court of record, by bill, plaint, or information.

Penalty for  
not render-  
ing satisfac-  
tion.

1812—(13)  
Sec. 5.  
Deeds to  
convey fee  
simple, if less  
estate be not  
expressly  
limited.

§ 33. Every estate in land, which shall be hereafter granted, conveyed, or devised, although words, heretofore necessary to transfer an estate of inheritance, be not added, shall be deemed a fee simple, if a less estate be not limited by express words.

Ib. Sec. 7.  
Contingent  
remainders  
to vest in  
posthumous  
heirs, with  
out prece-  
dent partic-  
ular estate.

§ 34. Where an estate hath been, or shall be, by any conveyance, limited in remainder to the son or daughter, or to the use of the son or daughter, of any person, to be begotten, such son or daughter, born after the decease of his or her father, shall take the estate in the same manner as if he or she had been born in the lifetime of the father, although no estate shall have been conveyed to support the contingent remainder after his death.

Ib. Sec. 8.  
Deed, equiv-  
alent to feoff-  
ment with  
livery of  
seizin.

§ 35. In all cases, by deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seized to use, or by deed operating by way of covenant to stand seized to use, the possession of the



bargainor, releasor, or covenantor, shall be deemed heretofore to have been, and hereafter to be, transferred to the bargainee, releasee, or person entitled to the use of the estate, or interest which such person hath, or shall have, in the use, as perfectly as if such bargainee, releasee, or person entitled to the use had been *enfeoffed*, with livery of seizin, of the land intended to be conveyed by the said deed or covenant.

§ 36. Where any person, to whose use, or in trust for whose benefit, another is or shall be seized of lands, tenements, or hereditaments, hath, or shall have, such inheritance in the use, or trust, as that if it had been a legal right, the husband or wife of such person would thereof have been entitled to *curtesy* or *dower*, such husband or wife shall have and hold, and may, by the remedy proper in similar cases, recover *curtesy* or *dower* of such lands, tenements, or hereditaments.

§ 37. Every estate in lands or slaves, which now is, or shall hereafter be created an estate in fee tail, shall from henceforth be an estate in fee simple, and the same shall be discharged of the conditions annexed thereto by the common law, restraining alienations before the donee shall have issue, so that the donee, or person in whom the conditional fee is vested, or shall vest, shall have the same power over the said estates, as if they were pure and absolute fees: *Provided*, That any person may make a conveyance or demise of lands, to a succession of donees then living, and the heir or heirs of the body of the remainder-man, and default thereof, to the right heirs of the donor in fee simple.

§ 38. Where any person, owning lands or tenements, shall sell the same, and enter into bond or obligation to make titles thereto, and shall depart this life without having made titles, in that case, the person to whom such bond or obligation was given, his executors or administrators, may petition the orphans' court of the county, where probate of the will of such deceased person was taken, or letters of administration granted, to compel the executors or administrators to make titles, agreeably to the bond or obligation given by the decedent: and it shall be the duty of such court, to cause their clerk or register, to cause notice of such petition to be published in some newspaper in this state, once a month for at least three months, when the court may, if they find that the said contract was fairly made, order the executor or administrator to make titles as such, to the lands or tenements sold by their testator or intestate; and any executor or administrator, refusing to comply with such order, may by such court be imprisoned for the contempt, until they will comply with the order of such court: *Provided*, That any person, dissatisfied with the sentence or order of the court, on any petition as aforesaid, may take an appeal to the superior court, as in other testamentary cases. (1)

§ 39. It shall be lawful for one justice of the peace, to take and certify the acknowledgment or proof of deeds, and relinquishments of dower, in like manner and form as is now required by law before judges of the circuit and county courts, clerks of the county courts, and notaries public, and he shall be entitled to the like compensation.

§ 40. Clerks of the county courts of the several counties of this state may lawfully take and certify the acknowledgments and proofs

(1) The orphans' court cannot compel the executor or administrator to make titles, unless the testator or intestate owned the land at the time he contracted to convey; nor unless his agreement was under seal.—*Simpson's Administrator v. Simpson*, Min. Rep. 33.



county courts may take and certify according to knowledge of deeds &c. to lands situated in any county.  
1839—(11)

*Sec. 1.*  
Instruments importing on the face to be sealed shall be considered such.  
1821—(19)

*Sec. 1.*  
To be by patent, under the seal of the state.

*Ib. Sec. 2.*  
What evidence will authorize the issuance of a patent.

*Ib. Sec. 3.*  
Patent to be recorded by secretary of state.

*Ib. Sec. 4.*  
Secretary's fee.

of deeds, and relinquishments of dower, to such deeds, whether the lands, tenements or hereditaments, therein conveyed, be situated in the county where any such clerk is acting, or elsewhere in this state, according to the form and under the provisions authorized in case of judges and clerks of circuit courts.

§ 41. All covenants, conveyances, and all contracts in writing, which import on their face to be under seal shall be taken, deemed and held, to be sealed instruments, and shall have the same effect as if the seal of the party or parties were affixed thereto, whether there be a scrawl to the name of such party or parties or not.

§ 42. For the conveyance or transfer of the right of lands, town lots, or other real estate in fee simple, belonging to this state, to any person or persons, company, body politic, or corporation, a patent shall issue with the great seal of the state, signed by the governor, and attested by the secretary of state.

§ 43. All purchasers of lands, town lots, or any real estate belonging to this state, their heirs, legal representatives, or assigns, may receive a patent for the same, upon his, her or their producing to the secretary of state, a certificate or receipt, signed by the treasurer of this state, that the said purchaser or purchasers, their heirs, legal representatives, or assigns, have satisfied or paid into the treasury of this state, the legal amount due for such land, town lot, or other real estate; and it shall be the duty of the governor, forthwith to issue a patent to the said purchaser or purchasers, their heirs, legal representatives or assigns, upon the production of the certificate or receipt, as aforesaid.

§ 44. It shall be the duty of the secretary of state, to record in a strong-bound book, to be kept for that purpose, all grants and patents, of whatever nature or kind soever, issued by this state, to any person or persons, company, body politic, or corporation.

§ 45. Any person, receiving a grant as aforesaid, shall pay therefor, upon the receipt thereof, to the secretary of state, the sum of seventy-five cents.

NOTE.—For other provisions respecting the registration of deeds, &c., See "Frauds and Fraudulent Conveyances."

Purchasers of school lands, sold under any of the acts providing for the sale of the 16th sections, are entitled to receive a patent from the governor, on producing a certificate of full payment from the president and cashier of the Bank of the State of Alabama.—See "Schools and School Lands,"—§ 21.

## CORONERS.

1833—(40)  
Coroner to hold inquest, in certain cases.

§ 1. It shall be the duty of every coroner, whenever any sudden death shall come to his knowledge, whether occurring by violence, casualty, or in prison, to summon, forthwith, a jury of six householders of the county, of known discretion, and proceed, immediately, to make diligent inquisition concerning the cause thereof, and all the material circumstances connected with such sudden death; for which purpose the coroner may summon witnesses, who shall attend and give testimony, under all the penalties provided against other witnesses summoned in behalf of the state: which inquisition so taken, shall be committed to writing, and returned to the next circuit court of the county. And if, after hearing the testimony, there shall be probable grounds to suspect any one of unlawfully



causing the death in question, or of being concerned therein, the coroner shall issue a warrant for the apprehension of such person; or, if he be escaped to another county, shall apply to some justice of the peace to issue the same; and such person, when so apprehended, shall be carried before a justice of the peace of the county where the death occurred, to be dealt with according to law. It shall also be the duty of the coroner, on the issuance of such warrant by himself, or the justice, to bind over all witnesses who have given material testimony, to attend the next circuit court; and shall return the recognizances of the witnesses, certified, with the inquisition. It shall moreover be lawful for the coroner, and it is made his duty, as often as circumstances may require it, to call to his aid the power of the county.

To issue warrants, when.

To recognize witnesses, &c.

§ 2. The coroner shall execute all process, when the sheriff is a party in interest, to any suit in the circuit or county court, and perform all the duties of sheriff, whenever from any cause, he may be incompetent to act as such. He shall, also, be keeper of the jail, when the sheriff is imprisoned upon any civil or criminal process; and for failing to perform any of the duties prescribed in this section, shall be liable to all the penalties prescribed against sheriffs and jailers for similar defaults.

When coroner shall act as sheriff or jailer.

Liabilities, &c.

§ 3. Whenever the coroner shall be required to discharge the duties of sheriff, agreeably to the laws now in force, the judge of the county court, may, at his discretion, demand of such coroner, such additional bond, as he may deem necessary or advisable.

Additional bond may be required.

§ 4. If any coroner shall fail to perform any of the duties required of him in the first section of this act, he shall be liable, together with his securities, to pay such damages, not less than two hundred dollars, as may be assessed by a jury, to be recovered on his official bond, by any one who will sue for the same; and in addition, shall be liable to be indicted and fined, not exceeding one hundred dollars.

For failure to do as required by 1st section, how responsible.

§ 5. When there is no coroner in the county, or he cannot attend, any justice of the peace may perform his duties in making the inquisition as aforesaid; and for such services, shall receive the fees allowed to the coroner.

Where no coroner, justice to act, &c.

§ 6. The judges of the county courts shall have power to appoint a coroner, in cases where there shall be no coroner in said county, when it may become necessary for any process to be served on the sheriff.

1b. Sec. 7. Judges of county courts to appoint coroners, when.

§ 7. When the sheriff and coroner of any county shall be disqualified, by reason of interest, in any cause then pending, or to be instituted in any court of said county, it shall be the duty of the judge of the county court, in all such cases, to appoint a special coroner, who shall be authorized to execute all necessary process therein.

1840—(15) Sec. 1. Judge of county court to appoint a special coroner, in certain cases. 1843—(11) Sec. 1.

§ 8. The judges of the several county courts in this state, shall have power, in all cases of emergency, to appoint a special coroner, during the temporary absence of the coroner of the county.

May appoint a special coroner in cases of emergency.

NOTE.—For the Coroner's appointment and bond,—See "County Officers."



## COTTON GINS AND GIN-HOLDERS.

1809—(1)  
Sec. 2.  
Seed falling  
from cotton  
gins to be en-  
closed, &c.

Penalty.

*Ib.* Sec. 3.  
Seed not to  
be thrown in  
to any water  
course, ex-  
cept Tom-  
beckbee and  
Alabama.

1810—(1)  
Sec. 1.  
Gins to be  
enclosed.

1832—(16)  
Sec. 2.  
Initials of  
owner's  
name, and of  
county, to be  
marked on  
bale.

*Ib.* Sec. 3.  
Penalty.

§ 1. EVERY owner or possessor of any gin, erected in or within one quarter of a mile of any city, town, or village, is directed and required to enclose, remove, or destroy all the cotton seed which fall from said gin, so as to prevent the putrefaction thereof; and every person, so neglecting, after having five days' previous notice thereof, shall forfeit and pay for the use of the state, twenty dollars, to be recovered before any justice of the peace, for every day he shall thus neglect to remove the cotton seed as aforesaid.

§ 2. Every owner or holder of any cotton-gin, within this state, is hereby restrained from throwing, or letting the cotton seed fall from their gins into any stream of water, or water-course whatever, except the Tombeckbee and Alabama rivers, and the waters of Bayou Sara: and every person, failing to comply with the requisitions of this section, shall forfeit and pay the sum of two hundred dollars, recoverable before any court having jurisdiction thereof, one moiety to the use of the person suing for the same, and the other to the person or persons injured.

§ 3. Every gin-holder within this state, shall enclose his or her cotton-gin with a good and sufficient fence, five feet high, and so close that no hog of any size can get through the same; and every such gin shall be enclosed so as to include all the cotton seed which may fall from, or in anywise appertain to said gin: and every person or persons failing to comply with the requisitions of this act, shall forfeit and pay the sum of twenty dollars for every day they shall neglect or fail so to comply; to be sued for and recovered by the party injured, before any justice of the peace, and applied to his own use: *Provided*, That nothing, in this act contained, shall prevent any person or persons from recovering any special damages, he, she or they may sustain, in consequence of any gin-holder negligently keeping his or her gin. (1)

§ 4. All owners of cotton-gins, within this state, shall mark on each bale of cotton, by them ginned and baled, the initial letters of their proper names, together with such initials as will designate the county of their residence.

§ 5. If any person or persons shall violate the provisions of the foregoing section, he, she, or they shall be liable to a penalty of five dollars, to be recovered before any court having competent jurisdiction, one-half to be paid into the county treasury, and the other half to the person suing for the same.

NOTE.—For the law respecting cotton receipts—See "Notes, Bills, and Bonds,"—§ 1, 2.

## COUNTIES.

Con. Ala.  
Art. 6.  
Sec. 16.  
New coun-  
ties.

§ 1. No new county shall be established by the general assembly, which shall reduce the county or counties, or either of them, from which it shall be taken, to a less content than nine hundred square

(1) An action for the forfeiture, for failing to keep a cotton gin enclosed, is barred, if not instituted within one year after the forfeiture accrued. *Johnson v. A. & J. E. Hughes*, 1 *Stewt. Rep.* 263.



miles ; nor shall any county be laid off of less contents. Every new county, as to the right of suffrage and representation, shall be considered as a part of the county or counties from which it was taken, until entitled by numbers to the right of separate representation.

§ 2. The general assembly shall, at their first session which may be holden in the year eighteen hundred and twenty-eight, or at the next succeeding session, arrange and designate boundaries for the several counties within the limits of this state, to which the Indian title shall have been extinguished, in such manner as they may deem expedient, which boundaries shall not be afterward altered, unless by the agreement of two-thirds of both branches of the general assembly ; and, in all cases of ceded territory, acquired by the state, the general assembly may make such arrangements and designations of the boundaries of counties within such ceded territory, as they may deem expedient, which shall only be altered in like manner : *Provided*, That no county, hereafter to be formed, shall be of less extent than nine hundred square miles.

*1b. Sec. 17.*  
Boundaries  
to be fixed in  
1828.

*Proviso.*

## COUNTY BUILDINGS.

§ 1. There shall be erected and established in every county, in which public buildings are not already provided, a good and sufficient court-house, for the legal adjudication of causes ; and a strong and efficient jail or prison, for the reception and confinement of debtors and criminals, well secured by timber, iron grates, bolts, and locks ; and also a pillory, whipping-posts, and so many stocks as may be convenient for the punishment of offenders. And every jail, so to be erected, shall consist of three apartments at least, one of which shall be appropriated to the reception of debtors.

1807—(25)  
Court-house,  
jail, pillory,  
whipping-  
post, and  
stocks, to be  
erected in  
each county.

§ 2. Every court-house and jail to be erected as aforesaid, shall be formed of such materials, and of such dimensions, and on such plans, as shall be directed by the judge of the county court in each county, who is hereby authorized to plan and project the same ; and to accept as a gift, or to purchase, for the use of the county, so much ground, in the towns where the courts may be ordered to sit, as he may judge convenient and necessary, whereon to build all or any of the structures aforesaid. Which purchase-money shall be defrayed by the proper county, and laid in the county estimates.

Court-house  
and jail to be  
built under  
the direction  
of the judge  
of the county  
court.

§ 3. The judge in every county, shall appoint two commissioners, of industry and knowledge sufficient to plan and carry into effect, by drawing the draft, superintending the foundation, and erecting and completing of every court-house, jail, pillory, whipping-posts and stocks, respectively. And for the faithful discharge of their duty in this behalf, the said commissioners shall enter into bonds, in the sum of five hundred dollars, with sufficient sureties, to the judge of the county court, in trust for the county, well and truly to account with the said judge, as often as they may be thereunto required by the judge, for the disposition of all money, or other property by them received from time to time, from the said judge or treasurer, or any other person, or by any means whatever, for the purpose of aiding or assisting in building the said court-house, jail, and other structures, in the county to which the commissioners may severally belong. And on default in the commissioners, for want of attention or competent knowledge to carry on the work with propriety, the said judge shall

Judge of the  
county court  
to appoint  
two commis-  
sioners.

Commission-  
ers to enter  
into bond.

Commission-  
ers may be  
discharged.



have power to discharge one or both of them, and place others in their stead; taking the same surety from them.

Erection and repair of buildings to be at county charge.

§ 4. Every county, now or hereafter to be erected and laid off within the state, shall defray all expenses that may attend the building, and keeping in good repair, within itself, of the court-house, jail, pillory, whipping-posts, and stocks, hereby ordered; and to this purpose, for the greater forwarding the business, the judge aforesaid, is hereby authorized, to draw out of the hands of the treasurer of the county, any sums of money which he may have received, belonging to the county, not otherwise appropriated; and the said judge is hereby directed, to apply the same wholly to the purposes of building a jail and court-house, pillory, whipping-posts, and stocks. But, in every county, a jail shall be first erected; and the treasurer and judge are to govern themselves accordingly.

Jail to be erected first.

1815—(13)  
Sec. 3.  
County court to make allowance for repairs, &c.

§ 5. The judges of the county courts are hereby authorized to make all necessary allowances, for repairs done to the court-houses and jails of their respective counties, and the claims of persons summoned to guard criminals, on the sheriff's certificate, which shall be paid out of the county treasuries, respectively: *Provided*, The sum so allowed by the county court shall not exceed one hundred dollars, in any one year.

1822—(25)  
Sec. 1.  
Sheriff to take charge of court-house.

§ 6. The sheriff of every county within this state, shall take charge of the court-house of his county; keep out intruders; have it cleaned; and observe the decays or any other injury that may be done to said court-house, or any other property attached to or near it, that may belong to said county, and make a report, at least once a year, to the county court: and the judge and commissioners of roads and revenue, are hereby empowered to make such appropriations out of the county treasury, as are necessary to be by the sheriff incurred, to carry this act into effect.

Judge, &c. may make appropriations for his expenses.

## COUNTY OFFICERS.

1815—(5)  
Sec. 2.  
Allowance by county court, to clerks, sheriff, and constables.

§ 1. It shall be the duty of the county courts in each county, to make such allowance to the clerks and sheriffs of their several counties, for their public services rendered either in the circuit or county court, as to said county court shall seem reasonable and just: *Provided*, The sum allowed shall not exceed fifty dollars per annum to any clerk or sheriff; also to allow to all constables the sum of *one dollar and fifty cents*,<sup>a</sup> for each day they shall be necessarily attending the circuit court; which sums of money shall be paid out of the county treasury; and no clerk, sheriff, or constable, shall be entitled to receive any sum or sums of money out of the state treasury, under any pretext whatever, for public services rendered after the passage of this act.

[1829—(2)  
Sec. 3.]

§ 2. The clerks of the circuit and county courts, and sheriffs of the different counties in this state, shall keep their offices at the several court-houses or places of holding courts therein, or within one mile thereof.

1819—(6)  
Sec. 36.  
Clerks &c. to keep offices at C. H.  
1819—(14)  
Sec. 4 and 6,  
& 1820—(26)  
Sec. 1, consolidated.  
Coroner, &c. how appointed.

§ 3. The court of roads and revenue, in each county in this state, shall appoint a coroner, county surveyor, treasurer and auctioneers, who shall hold their offices for the term of three years.



§ 4. The coroner, auctioneers, and notaries public, respectively, shall, before they enter on the duties of their several offices, give bond with sufficient security, to be approved of by the judge of the county court, in the sum of two thousand dollars, payable to the governor and his successors in office, for the faithful performance of their respective duties.<sup>1</sup>

§ 5. The judge of the county court, in each county in this state, shall recommend to the governor fit persons to act as notaries public; and it shall be the duty of the governor to commission the persons so recommended: and they shall, respectively, hold their offices for the term of three years from the dates of their commissions.

§ 6. The county treasurer shall, before he enters on the duties of his office, enter into bond, with good and sufficient security to the county court of the county for which he may be so appointed, in such sum as said court may direct, for the faithful accounting for and paying over the moneys, which may come into his hands as county treasurer.

§ 7. The certificate of the judge of the county court, that the treasurer, surveyor, coroner, or auctioneer, (as the case may be,) who may have been elected, has given bond and security as such, agreeably to law, shall be sufficient evidence of such officer's right and authority, to exercise and perform the duties of the office to which he may have been appointed.

§ 8. If any clerk, sheriff or other county officer, shall absent himself from the county he resides in, for the term of four months, the office he may hold shall be vacated.

§ 9. Should any of the vacancies, above contemplated, occur, it is hereby made the duty of the judge of the county court, of the county in which such vacancy may occur, if within his knowledge, immediately to certify the same under his hand and seal to the person, officer, or tribunal, appointed by law to fill the same; and if complaint shall, at any time, be made to him, of any such vacancy, it is hereby made the duty of the said judge, to inquire into the same, and if found true, to certify as above.

§ 10. When any such certificate shall be made, the proper person, officer, or tribunal, shall immediately fill such vacancy.

§ 11. It shall be lawful for clerks of the circuit courts, in the several counties of this state, and it shall be their duty, to take the official bonds of sheriffs and coroners, in all cases, where any judge of the county court shall be absent from the county, incapacitated from disease, or where the office of county judge may be vacant, within the time that any such bonds may be required to be taken by law.

§ 12. In all cases, where any such official bond may be taken by the clerk of the circuit court, the particular incapacity, which prevented such bond from being taken by the judge of the county court of the proper county, shall be recited in the condition thereof; and when so recited, the obligor or obligors, each and all of them, shall be forever estopped from denying any such recited incapacity of the judge of the county court, which may be in such condition contained.

§ 13. It shall be the duty of every clerk of the circuit court, whenever he shall have taken any such official bond of a sheriff, or coroner, in pursuance of the provisions of this act, to endorse on said bond his

<sup>1</sup> For the amount of auctioneers' bonds in the several counties—see "Auctioneers," § 3.



and transmit  
it to the  
clerk of the  
county  
court.

certificate, under his hand and official seal, (if there be one, and if not, under his private seal,) that the said bond was duly taken at his office, on the day the same shall bear date; and when so certified, the said clerk shall forthwith transmit the same to the clerk of the county court, whose duty it shall be to deposit the same in the file of his office; and every official bond, so taken, shall have the same force and effect, and be subject to the same regulations, as now appertain to the official bonds of sheriffs and coroners, when taken by the judge of the county courts.

*Ib. Sec. 4.*  
Fee to clerk.

§ 14. The clerk of the circuit court, for performing the duties herein prescribed, shall receive the sum of two dollars for every bond so taken, to be paid by the sheriff, or coroner, as the case may be.

*Ib. Sec. 6.*  
Bonds of  
county officers,  
where to be record-  
ed.

§ 15. All bonds of sheriffs, or other county officers, shall be recorded in the office of the clerk of the county court of the proper county, except the bonds of the judge of the county court, and clerk of the county court, which shall be recorded in the clerk's office of the circuit court, in a book to be kept for that purpose: and the record of any such bond, so recorded as aforesaid, may be proceeded on in the same manner as the original, under the certificate of the clerk, of its being a true copy, unless the court, before whom any proceeding may be had, shall deem it necessary, for the purposes of justice, to require the original.

Certified  
copy, evi-  
dence.

NOTE.—Public officers, generally, are liable, on the requisition of their securities, to execute new bonds, or be dismissed from office.—See "Securities."—§ 12 to 17.

## DEPOSITIONS.

1807—(32)  
Sec. 11.  
Depositions  
of non-resi-  
dent and in-  
firm witness-  
es.

§ 1. WHEN a person, who may be a witness in any cause in any of the courts, shall reside out of this state, or shall, by reason of age or bodily infirmity, or any other cause, be incapable of attending, to give his or her testimony in court, oath thereof being made to any judge, justice, or clerk of the court wherein such suit is depending, such judge, justice, or clerk, is hereby empowered to issue, or order the clerk of the court, wherein such cause is depending, to issue a commission to one or more persons, to take and receive the deposition of such witness; which being duly taken and returned, as hereinafter directed, shall be received as legal testimony: *Provided*, That the party, praying such commission, shall give such notice to the adverse party, of the time and place, when and where such commission is to be executed, as the court, judge, justice, or clerk, shall think proper; and the adverse party shall have liberty to cross-examine any witness whose deposition shall be so taken.<sup>1</sup>

*Ib. Sec. 12.*  
Of witnesses  
about to  
leave the  
territory.

§ 2. If any person, who may be a witness in any cause, depending in any of the said courts, shall be under the necessity of leaving this state before such cause is to be tried, or even before it be at issue, upon oath thereof being made before any judge or justice of the court, wherein the cause is depending, such judge or justice is hereby empowered to take the deposition of such witness, provided it shall

<sup>1</sup> When the opposite party resides out of the county, and has no agent or attorney therein, notice to be filed with the clerk. See "Judicial Proceedings at Common Law," § 140. See also "Witnesses," § 15.



appear, by the oath of an indifferent person, that sufficient notice of the time and place of such application has been given to the opposite party : or such judge or justice may order the clerk of the court, wherein such cause is depending, to issue a commission to one or more persons to take the deposition of such witness ; such notice being first given to the adverse party, of the time and place, when and where such deposition is to be taken, as the judge or justice, awarding such commission, shall direct ; which deposition, when returned, taken in manner aforesaid, shall be received as legal evidence. (1)

§ 3. In any case, depending as aforesaid, either party, wishing to improve the testimony of witnesses absent from the state, may take the same by interrogatories, the party making oath, before any one of the judges, justices, or clerk of the court, where such cause is depending, of the absence of such witness, and that he believes his testimony material ; such judge, justice, or clerk may, if the oath be taken before the clerk, issue, or if it be taken before a judge or justice, may order the clerk of the court, in which such cause is depending, to issue a commission, as aforesaid, directing the commissioner or commissioners to call the witness or witnesses before him or them, at a time and place by him or them to be appointed. But the party, applying for such *dedimus*, shall file his interrogatories in the clerk's office, and serve the opposite party with a copy thereof, with notice of the day on which such *dedimus* will issue, at least ten days before the same shall issue ; in which time the opposite party may file his cross-interrogatories ; and the interrogatories, and cross-interrogatories, if any there be, shall accompany such *dedimus* ; and if any deposition, taken by interrogatories, shall contain any testimony but the answers to such interrogatories, such surplusage shall not be read in evidence.

§ 4. All depositions shall be considered as taken *de bene esse*.

§ 5. When a witness, whose testimony may be material in any action or suit pending before any of the justices of the peace of this state, resides at such a distance from the county, wherein such suit may originate, as to render the obtaining of his testimony doubtful, according to the ordinary mode of procedure ; or shall reside without the limits of the state, it shall be lawful for such justices of the peace, before whom such suit may be pending, on the affidavit of the party, desirous of availing himself of the testimony of such absent witness, stating the materiality of the testimony, to grant and to issue a *dedimus potestatem*, to be directed to one or more persons, resident in the county where such absent witness resides, requiring him or them to execute such *dedimus* ; which *dedimus* shall be subject to the same regulations, and be governed by the same restrictions and provisions, as are already provided, by law, for cases originating in the superior courts of law of this state, and to stay all proceedings pending before him or them, until a sufficient length of time to execute such *dedimus* shall have elapsed.

§ 6. It shall be lawful for any person who may wish to use the testimony of the governor, treasurer, secretary of state, comptroller, or any one of the judges of the supreme court or circuit courts, or soli-

*Ib. Sec. 13.*  
Testimony of  
absent wit-  
nesses may  
be taken by  
interrogato-  
ries.

*Ib. Sec. 14.*  
*De bene esse.*  
1818—(14)  
Sec. 9.  
Justice may  
issue com-  
mission to  
another  
county, or  
beyond the  
state.

1833—(39)  
Sec. 1.  
Depositions  
of officers in

(1) Depositions may be valid, though in the hand-writing of the attorney of the party offering them. *Wynn & Wife v. Williams*, *Min. Rep.* 136. Notice of taking depositions, left at the dwelling-house of the party, with his clerk, is not sufficient. *M'Ewen v. Morgan*, 1 *Stewt. Rep.* 190. See also *Braham v. Debrell*, *ib.* 14.



the public  
service, how  
taken.

citors, or clerks of the circuit and county courts of this state, president or cashier of the Bank of the State of Alabama or either of its branches, register or receiver of any of the land offices in said state, in any civil matter or suit pending in any of the courts of this state, after making oath of the materiality of the testimony or witness in said suit, and that he is in one of the vocations above specified, to proceed to take their or either of their depositions, in the same manner and under the same regulations and restrictions, as is now usual and lawful in taking depositions of non-resident citizens.

1833—(20)  
Sec. 1.  
Governor to  
appoint com-  
missioners in  
other states.

§ 7. The governor of the state shall have power to nominate, appoint, and commission one or more persons in each of the other states of the United States, and in the District of Columbia, who shall be authorized to receive and reduce to writing, the testimony or deposition of any witness or witnesses, person or persons, who may come before him and depose, concerning any matter or thing, suit or controversy, within the state of Alabama.

*Ib. Sec. 2.*  
Testimony  
taken may  
be read, &c.

§ 8. The testimony or deposition, thus received and reduced to writing, when duly sworn to and subscribed by the witness deposing, and certified by the said commissioner under his hand and seal, may be used in any of the courts of law or equity in this state, and shall have the same validity as the depositions of witnesses, taken under and by virtue of the laws, as they have heretofore existed: *Provided*, That nothing, in this act contained, shall be so construed as to prevent the taking of testimony by deposition, in the same manner and under the same rules and regulations, as heretofore prescribed by law.

Proviso.

*Ib. Sec. 3.*  
Commission-  
ers so ap-  
pointed to  
take ac-  
knowledg-  
ments of  
deeds and  
wills.

§ 9. The commissioners, aforesaid, shall have full power and authority to receive the acknowledgment of all deeds and conveyances of real and personal property, lying and being within this state, which are executed without this state, and also may receive the proof of all wills and testaments, bequeathing any property within this state, which shall be executed without this state, in the same manner and under the same regulations, as officers appointed for that purpose, by the law of the state or district, for which said commissioners may have been appointed and commissioned; which deeds and conveyances shall be admitted to record, in the county where said real or personal property may lie or be, when the acknowledgment of the same shall have been duly certified, before the commissioner receiving the same, under his hand and seal; and copies of such will and testament shall be admitted to probate, in the county where the property bequeathed shall lie or be, when proof of the same shall have been duly certified, by the commissioner before whom the same was made, under his hand and seal: *Provided*, That such copies shall be liable to be contested and controverted, in the same manner as the original might have been.

Which may  
be recorded.

Copies there-  
of to be evi-  
dence.

Proviso.

*Ib. Sec. 4.*  
Commis-  
sioners to file  
affidavit, &c.

§ 10. Each of the said commissioners, so appointed and commissioned, shall, (if he intends to accept his said appointment,) as soon as convenient, file in the office of the secretary of state of this state, an affidavit, subscribed and sworn to before some officer competent to administer oaths, by which he shall swear, that he will correctly and faithfully discharge his said office of commissioner, according to the best of his skill and judgment, which affidavit shall be certified by the officer before whom the same shall have been made; and further, the said commissioners shall hold their offices during the pleasure of the governor.

Tenure of  
office.

*Ib. Sec. 5.*  
Secretary of  
state to re-

§ 11. The secretary of state shall inscribe in some book, kept for that purpose, the names of all commissioners aforesaid, who have



signified their acceptance of their said offices, by filing the affidavit aforesaid, together with the places where they may reside, and for which they have been appointed; and shall forward to each of the clerks of the county courts of this state, a certificate or certificates of the appointment of such commissioners, and the place where each resides, within a convenient time after the acceptance of the said commissioners shall have been so signified, which certificate or certificates shall be kept in the offices of the said clerks, and may be referred to by any person or persons desirous thereof.

§ 12. When the testimony of any practicing attorney or counsellor at law, or solicitor in chancery, shall be material for plaintiff or defendant in any cause in any court of this state, it shall be lawful for the testimony of such attorney, counsellor or solicitor, to be taken by deposition, as in other cases of depositions, as is now provided by law: *Provided*, That oath be first made, that such witness is such attorney, counsellor or solicitor, and also, of the materiality of his testimony; *And provided, also*, The usual notice shall be given to the adverse party, and the depositions so taken shall be competent testimony in the cause for which the same was taken in any court in this state.

§ 13. In all cases, where it is now required by law, that an affidavit shall be made before a judge or clerk of court, in order to the taking of any deposition, such affidavit may hereafter be made before a justice of the peace; and the clerk of the proper court, on receiving such affidavit, shall proceed to make the necessary orders, and issue commissions, in the same manner as if such affidavit had been made before such clerk or judge.

§ 14. The depositions of witnesses, about to leave the state, may be taken in the same manner as is or may be provided, for the taking of depositions of witnesses residing without the limits of the state.

§ 15. In all civil suits, now or hereafter depending in the courts of this state, wherein any party, plaintiff or defendant, shall desire the testimony of any person, who is at the time a judge, chancellor, clerk, or register, of any of the courts of law or equity in this state, or is at the time a practicing physician, "or any officer of the United States, the party so desiring such testimony, may, on making affidavit by himself, his agent, or attorney, of the materiality of the testimony of such proposed witness, and that he is judge, chancellor, clerk, register, or practicing physician, or officer of the United States, as aforesaid, procure a commission, and proceed to take the deposition of such witness, to be used, in the trial of said cause, in the same way and manner, and on like notice, as now provided for the taking of depositions of witnesses residing without the limits of this state.

§ 16. The same forms and rules, now established by law, for the taking of depositions in other cases, shall apply to and govern all depositions taken under this act.

§ 17. Whenever it may become necessary, in any civil case pending, or to be instituted, in any of the courts of this state, to have the testimony of any female witness, the same shall be taken by deposition, whether the said female witness live in the county where the said cause is pending or not.

§ 18. If any person, whose evidence is required by either party, shall fail or refuse to appear before the commissioner legally appointed to take such evidence, and give testimony, she shall be fined in a sum not exceeding one hundred dollars, at the discretion of the court in which said cause is pending, and be liable to an action, at the suit

gister commissioners' names and residences.

1830—(13)  
Sec. 1.  
Depositions of attorneys at law and solicitors in chancery may be taken.

1830—(14)  
Sec. 1.  
The affidavit to authorize taking depositions may be made before justice of the peace.

Ib. Sec. 2.  
The deposition of witness about to leave the state may be taken.

1840—(16)  
Sec. 1.  
The deposition of any judge, chancellor, clerk, register, practicing physician, or officer of the United States, may be taken.

[1834—(16)]

1840—(17)  
Sec. 1.

Ib. Sec. 2.  
Depositions of female witnesses to be taken.

Ib. Sec. 3.  
Penalty for failing to appear and testify.



of the party aggrieved, to the amount of the damages sustained by said party.

1840—(18)  
Sec. 1.  
Commissioner to issue subpoenas for witnesses.  
His duty if witness fail to appear.

§ 19. All commissioners, authorized to examine witnesses, shall have authority to issue subpoenas to compel their attendance, which shall be served by the sheriff of the proper county; and if any witness, so summoned, shall fail to appear at the time and place appointed in the subpoena, the commissioners shall certify that fact, together with the subpoena, to the court in which the cause is pending, wherein his testimony is sought to be used; and the said court shall, thereupon, proceed against the witness, in the same manner as if the subpoena had issued from the office of the clerk of that court.

NOTE.—For the manner of taking depositions in contested elections of members of the general assembly—See “Elections—Mode of contesting.”

## DESCENTS.

Con. Ala.  
Art. 1.  
Sec. 21.  
No forfeiture from suicide.  
1806—(1)  
Sec. 16.  
Lands of intestate, how to descend.

§ 1. THE estates of suicides shall descend or vest as in cases of natural death: if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

Widow's dower, when no lineal descendants.

a See “Dower,” § 5.

Id. Sec. 18.  
Children before marriage legitimated.  
1824—(5)  
Sec. 1.  
Bastards to inherit on the part of the mother.

§ 2. When any person shall die, seized of any estate or inheritance in lands, tenements, or hereditaments, not devised, the same shall descend to his or her children, and their descendants, in equal parts; the descendants of the deceased child or grand-child to take the share of their deceased parent, in equal parts among them; and when there shall be no children of the intestate, nor descendants of such children, then to the brothers and sisters of the intestate, and their descendants, in equal parts; the descendants of a brother or sister of the intestate to have, in equal parts among them, their deceased parent's share; and where there shall be no children or descendants of them or any of them, and no brothers or sisters, or descendants of them, or any of them, then to the father if he be living, if not, to the mother of the intestate; and if there be no children of the intestate, or descendants of such children, and no brothers or sisters, or descendants of them, nor father or mother, then such estate shall descend, in equal parts, to the next of kin to the intestate, in equal degree, computing by the rules of the civil law; and there shall be no representation among collaterals, except with the descendants of the brothers and sisters of the intestate; and there shall, in no case, be a distinction between the kindred of the whole and half blood, except the kindred of the whole blood, in equal degree, shall be preferred to the kindred of the half blood in the same degree; saving to the widow of the intestate, in all cases, her dower. And where there shall be no children of such intestate, nor descendants of them, then the widow shall have as her dower, one-half<sup>a</sup> of such before-mentioned estate of her deceased husband.

§ 3. Where a man, having by a woman a child or children, shall afterwards intermarry with such woman, such child or children, if recognized by him, shall be thereby legitimated.

§ 4. Bastards shall be capable of inheriting, or of transmitting inheritance, on the part of their mother, in like manner as if they had been lawfully begotten of such mother; and shall, also, be entitled to a distributive share of the personal estate of any of their kindred,



on the part of their mother, in like manner as if they had been lawfully begotten of such mother.

§ 5. The kindred of any bastard, on the part of his mother, shall be entitled to the distribution of the personal estate of such bastard, in like manner as if such bastard had been lawfully begotten of his mother.

*Id. Sec. 2.*  
Bastard's kindred to have distribution of his estate.  
1818—(1)  
Sec. 1.  
Estate in joint-tenancy to descend as though severed.

§ 6. When two or more persons hold an estate, real or personal, jointly, and one joint-tenant dies before severance, his interest in said joint estate shall not survive to the remaining joint-tenant, or joint-tenants, but shall descend to, and be vested in, the heirs or other legal representatives of such deceased joint-tenant, in the same manner as if his interest had been severed and ascertained.

NOTE.—Posthumous children, not provided for by will, are entitled to inherit as in case of intestacy.—See "Wills," § 6.

## DISQUALIFYING LAWS.

§ 1. LAWS shall be made to exclude from office, from suffrage, and from serving as jurors, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors.

Con. Ala.  
Art. 6.  
Sec. 5.

§ 2. Any person, who shall be convicted of bribery, forgery, perjury, larceny, subornation of perjury, receiving stolen goods, knowing them to be stolen, or shall be convicted of stealing, or altering or defacing any record, with intent to defraud, shall be disqualified from holding or exercising any office under this state, from serving as a juror in any suit, from giving testimony before any judicial tribunal in this state, and from voting at any election therein.

1827—(33)  
Sec. 1.  
Certain crimes disqualify from holding office, voting, or serving as juror or witness.

NOTE.—Disqualification for embezzlement by bank officers—See "Bank of the State of Alabama"—§ 19; Branch at Montgomery—§ 8; at Decatur—§ 7; at Mobile—§ 8; at Huntsville—§ 8. Assessors and collectors of taxes, convicted of making a false and fraudulent return, shall be thenceforth incapable of holding any office of profit, honor, or trust, within this state.—See "Taxes,"—§ 67. See Penal Code, ch. 3, § 12, and ch. 8, § 27 and 29.

## DIVORCES.<sup>1</sup>

§ 1. DIVORCES from the bonds of matrimony shall not be granted, but in cases provided for by law, by suit in chancery; and no decree

Con. Ala.  
Art. 6.  
Sec. 13.  
Divorces.

<sup>1</sup> An Act, passed March 10, 1803, entitled "An Act concerning divorce and alimony," provides:—

SEC. 3. That divorces from the bond of matrimony, shall be decreed in cases where the parties are within the degrees prohibited by law, in cases where either party is naturally impotent, and in case of adultery in either of the parties, and also for wilful, continual and obstinate desertion, for the term of five years; but the decree or sentence of divorce, in such cases, shall not render illegitimate the issue born under such marriage.

SEC. 4. That divorces from the bond of matrimony shall also be decreed, where either of the parties had another wife or husband, living at the time of such second or other marriage, and that all marriages, where either of the parties shall have a



for such divorce shall have effect, until the same shall be sanctioned by two-thirds of both houses of the general assembly.

1824—(15)

Sec. 1.  
Causes of divorce.

Natural impotency.

§ 2. Where a marriage hath been heretofore, or shall be hereafter, contracted and celebrated between any two persons, and it shall be adjudged, that either party, at the time of the contract, was, and still is, naturally impotent, in every such case, it shall be lawful for the injured person to obtain, in manner heretofore provided by law, a divorce from the bonds of matrimony.

1832—(20)

Sec. 1.  
Chancery court may grant divorces in cases of adultery, abandonment, & extreme cruelty.

§ 3. The several chancery courts of this state are hereby invested with full power and authority to decree divorces, in the manner prescribed by law, and in the following cases, that is to say: in favor of the husband, where his wife shall have been taken in adultery, or voluntarily left his bed and board for the space of three years, with intention of abandonment; and in favor of the wife, where her husband shall have left her for the space of three years, with intention of abandonment; or where he shall have abandoned her, and lived in adultery with another woman; or where his treatment to her is cruel, barbarous, and inhuman.<sup>1</sup>

1820—(29)

Sec. 2.  
Application for divorce to be by bill in chancery.

§ 4. In the cases before-mentioned, the party, desirous of obtaining a divorce, may apply to the chancery court of that county, in which he or she resides, by a bill in chancery, stating the grounds of the application, on which such proceedings shall be had, as are usual in other suits in chancery.

Ib. Sec. 3.  
Notice to non-resident defendants.

§ 5. If the court shall be satisfied, that the defendant is not a resident of this state, order of publication shall be made as in other cases of non-resident defendants, except that the order shall succinctly state the object of the bill.

Ib. Sec. 4.  
Defendants may answer without oath. Bill not confessed for want of answer.

§ 6. The defendant may appear and answer the complainant's bill, without oath, denying the allegations thereof, or if the defendant shall fail to appear and answer, the cause may be set down for trial, but the bill shall not be taken for confessed, but proof shall be required to support the allegations thereof, as in cases where they are decided by answer.

Ib. Sec. 5.  
Decree not to release offending party.

§ 7. The court may pronounce a decree for a divorce, according to the provisions of this act; but such decree shall not operate so as to release the offending party, who shall remain, nevertheless, subject to all the pains and penalties, which the law prescribes against a marriage, where a former wife or husband is living.

Ib. Sec. 6.  
Alimony.

§ 8. The court pronouncing the decree of divorce, shall also decree and order a division of the estate of the parties, in such way as to them shall seem just and right, having due regard to the rights of each party and their children, if any: *Provided, however,* That nothing herein contained, shall be construed to compel either party to divest him or herself of the title to real estate.

Ib. Sec. 7.  
Temporary orders.

§ 9. Pending a suit for divorce, the court may make such temporary orders, respecting the property and parties, as they shall deem equitable.

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*former wife or husband living at the time of such marriage, shall be invalid from the beginning, and absolutely void.*

The act of December 23, 1824, repeals this law as to all the grounds of divorce above specified, except that of "natural impotency," *continuing at the time of the application for a divorce* by the party injured. The concluding part of each section, however, suggests obvious reasons why they should be retained, at least in this form.

<sup>1</sup> See "Judicial Proceedings in Chancery," § 10.



§ 10. When a decree shall be rendered for a divorce, it shall be the duty of such court, to make out, at the request of the party in whose favor the decree is rendered, a complete copy of the record and evidence in said suit, which shall be certified by said clerk, and by him sealed up and directed to the speaker of the house of representatives of the state of Alabama, and endorsed thereon, that it is a decree for a divorce; which decree and proceedings shall be delivered to said speaker by the party, or his or her attorney, applying for the same, within and during the ensuing session of the legislature.

*Ib. Sec. 8.*  
Copy of proceedings to be delivered to speaker of the house of representatives.

§ 11. It shall be the duty of the speaker of the house of representatives, in the presence of the members of the house, to open such record, and cause the same to be read and proceeded on, according to the constitution of the state of Alabama.

*Ib. Sec. 9.*  
Speaker's duty.

§ 12. If it appear to the court, that the adultery complained of is occasioned by collusion of the parties, and done with intention to procure a divorce, then no divorce shall be decreed.

1803—(5)  
*Sec. 5.*  
Collusive adultery insufficient.

§ 13. If any persons cohabit together, after the divorce for the cause of adultery, such persons, so offending, shall be liable to all the pains and penalties, provided by the laws then existing against adultery.

*Ib. Sec. 9.*  
Penalty for cohabiting after divorce for adultery.

§ 14. If it shall appear, that the complainant has been guilty of adultery, and has admitted the defendant into conjugal society or embraces, after he or she knew of the criminal fact, or that the said plaintiff (if the husband) allowed of his wife's prostitution, it shall be a bar against a divorce for such previous misconduct.

1824—(15)  
*Sec. 2.*  
Bar against divorce.

§ 15. In all cases, where both parties shall be guilty of adultery, it shall be a bar to a divorce.

*Ib. Sec. 3.*  
Mutual adultery.

§ 16. In order to prevent collusion between the parties, in no case shall the confession of them, or either of them, be taken or received as evidence in any case of divorce.

*Ib. Sec. 4.*  
Confessions not evidence

§ 17. In no case of divorce shall the party, against whom such divorce may be granted, or who may have been guilty of any of the offences upon which such divorce may have been granted, be allowed to marry again; and in case the said party shall marry again, such marriage is hereby declared null and void; and the party, so marrying again, shall be liable to such penalties as are prescribed for the crime of adultery.

*Ib. Sec. 5.*  
Subsequent marriage of the party in fault, void.

§ 18. No person shall be permitted to commence a suit in chancery for a divorce, until he or she shall have been an inhabitant of this state, at least three years immediately preceding.

*Ib. Sec. 6.*  
Complainant must have resided three years in the state.

§ 19. Divorce from bed and board may be granted for extreme cruelty in either of the parties, on the application of the party aggrieved, by the same proceedings in the chancery court of the county, in which the complainant may reside, as are, or may be required by law to be had, on bill, praying divorce from the bonds of matrimony, and the divorce of such chancery court shall be final.

*Ib. Sec. 7.*  
Divorces from bed and board.

§ 20. The courts of chancery shall have power, in all cases of separation between man and wife, and neither party shall obtain a divorce, to give the custody and education of the children to either the father or mother, as to them may seem right and proper, having regard to the prudence and ability of the parents, and the age and sex of the child or children.

1833—(1)  
*Sec. 1.*  
Chancery courts, in cases of separation between man & wife, may assign children to either.  
1833—(15)  
*Sec. 1.*

§ 21. The courts of chancery shall have power, in cases of the separation of parents, to permit either the mother or father to have the care and education of the children, or any of them, as to said courts may seem just and proper; to be determined and decided on



the petition of either party ; and, in the meantime, to issue any injunction, or make any order, that the safety and well-being of any such children may require.

1843—(14)

Sec. 1.

Pregnancy of woman before or at time of marriage, without knowledge of husband, good cause for divorce.

§ 22. In all marriages which have, or may hereafter take place, if it shall be made to appear to the satisfaction of the court to which application may be made for divorce, by the husband, that the wife previous to, or at the time of marriage, was pregnant, and that her husband had no agency in, nor was, at the time of marriage, cognizant of such pregnancy, it shall be adjudged sufficient cause for divorce from the bonds of matrimony.

## DOWER.

1806—(1)

Sec. 11.

Widow may waive provision by will, and claim her dower.

*Ib.* Sec. 17. Widow's dower, when the estate is insolvent.

§ 1. THE widow may, in all cases, waive the provision made for her in the will of her deceased husband, and claim her dower, which shall be assigned her accordingly ; in which case she shall receive no part of such provision, unless it appears plainly by the will, that the testator intended it in addition to her dower.

§ 2. When the estate of any testator or intestate shall be represented insolvent, and shall not be sufficient, both real and personal, to pay the just debts, the widow of such testator or intestate shall, though there be no children, or descendants to them, of such testator or intestate, be endowed with one-third only of the lands, tenements, and hereditaments of her deceased husband, any thing in this act to the contrary notwithstanding.<sup>a</sup>

<sup>a</sup> See "Descents," § 2.

1812—(14)

Sec. 1.

How the widow shall be endowed when the husband dies intestate, or she dissents to his will.

§ 3. When any person shall die intestate, or shall make his last will and testament, and not therein make any express provision for his wife, by giving and devising unto her such part or parcel of his real and personal estate, as shall be fully satisfactory to her, such widow may signify her dissent thereto, in the circuit or county court in the county wherein she resides, at any time within one year after the probate of such will, and then and in that case she shall be entitled to dower in the following manner, to wit : one-third part of all the lands, tenements, and hereditaments, of which her husband died seized and possessed, or had before conveyed, whereof said widow had not relinquished her right of dower, as heretofore provided for by law, which third part shall be and inure to her proper use, benefit, and behoof, in and during the term of her natural life ; in which said third-part shall be comprehended the dwelling-house, in which her husband shall have been accustomed most generally to dwell next before his death, together with the offices, out-houses, buildings, and other improvements thereunto belonging, or appertaining : *Provided*, That if it should appear to the judge of the court to whom application is made, that the whole of said dwelling-house, out-houses, buildings, and other improvements thereunto appertaining, cannot be applied to the use of the widow, without manifest injustice to the children, or other heirs, then, and in that case, such widow shall be entitled to such part only as the court may deem reasonable and just.<sup>1</sup>

<sup>1</sup> When the deceased husband has left *no lineal descendants*, the widow is to be endowed with one-half of his real estate.—See "Descents,"—§ 2,—unless his estate be insolvent as above,—§ 2.



§ 4. When a husband dies intestate, or shall make his last will and testament, and not make provision therein for his wife, as expressed in the first section of this act, she shall be entitled to share in the personal estate, in the following manner, to wit: "if there be no children, or if there be but one child, she shall be entitled, out of the residue left after paying the debts of the deceased, to one-half: if there be more than one child, but not more than four, in that case she shall be entitled to a child's part; but if there be more than four children, then, and in that case, she shall be entitled to one-fifth part in absolute right.

*Ib. Sec. 2.*  
Widow's share of the personal estate.  
[a1826—(35)  
Sec. 1.]

§ 5. It shall be lawful, after the passing of this act, for any widow claiming dower, to file her petition in the circuit or county court, in the county where her husband shall have usually dwelt next before his death, setting forth the nature of her claim, and particularly specifying the lands, tenements, and hereditaments, of which she claims dower, and praying that her dower may be allotted to her; whereupon the said court shall issue their writ to the sheriff, commanding him to summon five discreet freeholders, as commissioners, connected with the parties neither by consanguinity nor affinity, and entirely disinterested, who, upon oath, (which oath the sheriff is hereby authorized to administer,) shall allot, and set off by metes and bounds to the said widow, one-third<sup>b</sup> part, according to quantity and quality, of all the lands, tenements, and hereditaments in said county, and shall put her in possession of the same, which possession shall vest in her an estate for her natural life; and where she has claim to dower to lands lying in different counties, she may proceed in the circuit or county court of the county where such land may lie, and make recovery in manner as is hereby directed; and the sheriff and commissioners shall, also, at the same time, allot and set off to such widow her portion of the personal estate, of which her husband died possessed, and to which by this law she shall be entitled, which part or portion shall be and inure to such widow, her heirs, executors, administrators, and assigns, for ever.

*Ib. Sec. 3.*  
Widow may file petition for her dower.

Portion to be allotted by metes and bounds.  
[b See "De-scents," § 2.

Portion of personal estate to be allotted by sheriff and commissioners.

§ 6. The proceedings upon such petitions for dower shall be in a summary way, and the court shall, at their first term when such petition is filed, proceed to hear and determine, as to them shall seem just and right: *Provided*, That the party, petitioning for dower, shall give ten days' previous notice to the executors or administrators, by serving them with a copy of said petition; and where there are no executors or administrators, or where they do not reside in the county of the residence of such widow, or where the widow shall be the executrix or administratrix, then she shall give the said notice by advertisement in one of the newspapers published in the state, nearest to the residence of such widow, to be published four times in succession.

*Ib. Sec. 4.*  
Proceedings on petition to be summary.

§ 7. It shall be lawful for the widow to retain the full possession of the dwelling-house, in which her husband most usually dwelt, next before his death, together with the out-houses, offices, or improvements and plantation thereunto belonging, free from molestation and rent, until she shall have her dower assigned her.

*Ib. Sec. 5.*  
Widow to retain possession till dower is assigned.

§ 8. Whenever any person shall die, leaving a widow not satisfactorily provided for, according to the act of the general assembly, passed on the 22d day of December, 1812,<sup>1</sup> any land, the title to

1816—(6)  
Sec. 3.  
Certain lands subject to dower.

<sup>1</sup> The second act under this title.



which shall be secured in conformity to the provisions of this act,<sup>1</sup> shall be subject to the dower of the said widow, in the same manner as if the title had been complete at the time of the death of her husband.<sup>2</sup>

1836—(13)  
Sec. 1.  
*Feme covert*  
under 21 may  
relinquish  
dower.

1839—(15)  
Sec. 1.  
How *feme*  
*covert* may  
bar dower.

§ 9. It shall be lawful for all *femes covert* within this state, whether under or over the age of twenty-one years, to make relinquishment of dower, to the estate of their husbands, under the rules, limitations and restrictions now provided.

§ 10. When any *feme covert* shall join with her husband, in the execution of any deed of conveyance of lands, tenements and hereditaments, in the presence of two or more credible attesting witnesses, or shall acknowledge the execution of the same, before any person authorized by law to take acknowledgments of deeds, the same shall operate as an absolute and perpetual bar to her right of dower in, and to, any lands, tenements and hereditaments, embraced in, or conveyed by such deed.

1840—(19)  
Sec. 1.  
How non-  
resident  
*femes covert*  
may relin-  
quish dower.  
Ib. Sec. 2.  
Widow of  
non-resident  
grantor bar-  
red of dower,  
unless, &c.

§ 11. It shall be lawful for any *feme covert*, residing without the limits of this state, to release her right of dower in any land lying in this state, by deed of release, acknowledged before any notary public, or judge of any court of record in the state, kingdom, or territory, in which she may reside.

§ 12. The claim to dower, in any land lying and being in this state, by the widow of any grantor, who shall be a non-resident of the same, at the time of the conveyance thereof, shall be forever barred, unless asserted before the proper tribunal, within twelve months after the death of her husband, who granted the said land.

## ELECTIONS.

Con. Ala.  
Art. 3.  
Sec. 5.  
Who are  
qualified  
electors.

§ 1. EVERY white male person, of the age of twenty-one years or upwards, who shall be a citizen of the United States, and shall have resided in this state one year next preceding an election, and the last three months within the county, city, or town, in which he offers to vote, shall be deemed a qualified elector: *Provided*, That no soldier, seaman, or marine, in the regular army or navy of the United States, shall be entitled to vote at any election in this state; *And provided, also*, That no elector shall be entitled to vote, except in the county, city, or town, (entitled to separate representation,) in which he may reside at the time of the election.

Ib. Sec. 6.  
Electors' pri-  
vileges.

§ 2. Electors shall, in all cases, except in those of treason, felony, or breach of the peace, be privileged from arrest, during their attendance at elections, and in going to and returning from the same.

Ib. Sec. 7.  
Elections, by  
ballot.

§ 3. In all elections by the people, the electors shall vote by ballot, until the general assembly shall otherwise direct.

Ib. Sec. 8.  
Where held.

§ 4. Elections for representatives for the several counties, shall

<sup>1</sup> Lands purchased of the United States, for which partial payments only have been made at the time of the testator's or intestate's death, and the title is afterwards completed by the executor or administrator.

<sup>2</sup> The widow shall also be endowed of estates for use, in which, from the nature of her interest, the right, if a legal one, would have entitled her to dower.—See "Conveyances,"—§ 36.



be held at the place of holding their respective courts, and at such other places as may be prescribed by law.

§ 5. Every person shall be disqualified from holding any office or place of honor or profit, under the authority of the state, who shall be convicted of having given or offered any bribe, to procure his election or appointment.

§ 6. Returns of all elections for officers, who are to be commissioned by the governor, and for members to the general assembly, shall be made to the secretary of state.

§ 7. The sheriff of each county shall, at least one month previous to the time appointed for holding every election for representatives to the general assembly, by advertisement, set up at the door of the court-house, and three other public places in his county, notify the inhabitants of his county, of the time and place of such election, and what offices are to be filled by such election. The sheriff, on the day of every such election, shall open the poll by twelve o'clock, and continue the same open until the hour of four in the afternoon. A suitable ballot-box shall be previously provided by the sheriff, to be paid for by the order of the county court, out of the county treasury.

§ 8. If, at any time, it shall happen, that there shall be no sheriff in any county, or in case he is unable to attend, or does not attend, said elections, the coroner of such county, or if there be neither sheriff nor coroner, the justice of the peace, who is oldest in commission, is hereby authorized to perform the duties, which, by this act, are enjoined upon the sheriff, and shall be considered as the returning officer of such county.

§ 9. It shall be the duty of the judge of the county court and commissioners of roads and revenue, for the several counties in this state, at the term of the commissioners' court, for their respective counties, immediately preceding any election, for electors of president and vice-president of the United States, members of congress, members of the general assembly, and such county officers as are elected by the qualified voters of their whole counties, to appoint three inspectors for each precinct in their respective counties, to hold said election, a majority of whom may act: *Provided, however*, If no such appointment shall have been made, or the inspectors, so appointed, shall fail to attend, it shall be the duty of the returning officer appointed to hold said election, together with two justices of the peace, if any be present, to appoint said inspectors; and if there are no justices of the peace present, then the said officer, together with two householders, or freeholders, shall make said appointment.

§ 10. The officers legally appointed to hold any of said elections, shall have the right to administer the oaths now required to be taken by inspectors and clerks of elections: *Provided*, There should be no justice of the peace present to administer the same.

§ 11. It shall be the duty of the inspectors of elections, to prosecute any person or persons, who may vote at the precinct where they may preside, and who shall not, by the constitution and laws of the state, be entitled to vote at the same.

§ 12. The said inspectors shall appoint two persons to act as clerks at every election, whose duty it shall be, to take down in writing, on separate lists, the name of every person voting.

§ 13. The clerks and inspectors of every such election, shall, before they proceed to business, swear, (or affirm, as the case may be) faithfully to perform their duties at such election, justly and agreeably to law, according to the best of their skill and judgment.

Art. 6.  
Sec. 4.  
Bribery.

Id. Sec. 15.  
Returns of  
elections.

1812—(18)  
Sec. 2.  
Sheriff to  
give one  
month's notice  
of general  
election.

Polls, when  
opened, &c.

Id. Sec. 3.  
Coroner or  
justice to attend  
elections, if no  
sheriff is  
present.

1835—(14)  
Sec. 1.  
Judge of  
county court  
and com. of  
roads and revenue  
to appoint 3 inspectors  
for each precinct  
at the term  
preceding  
elections.

If they do  
not appoint,  
returning officer  
and two  
justices or  
householders  
to do so.

Id. Sec. 2.  
Officers holding  
elections  
may administer  
oaths if no  
justice be present.

Id. Sec. 3.  
Inspectors to  
prosecute  
those who  
vote illegally

1812—(18)  
Sec. 8.  
Clerks

Id. Sec. 9.  
Inspectors  
and clerks  
to be sworn.



*Ib. Sec. 10.*  
Manner of  
procedure at  
elections.

§ 14. Every person, who by law is entitled to vote for representatives to the general assembly, and who shall choose to vote at any election, shall give to the sheriff, coroner, or justice, whoever may be the returning officer, in presence of the inspectors, a ticket or scroll of paper, rolled up, on which shall be written the name or names of the person or persons for whom he intends to vote; which ticket the said returning officer shall, in the presence of the inspectors, put into the ballot-box, and, at the same time, the clerks of the election shall take down, on separate lists, the name of every person voting; and when the election shall be finished, the returning officer and inspectors shall, in the presence of such of the candidates and electors as may choose to attend, open the box and number the ballots; at the same time reading aloud the names of the persons, who shall appear on each ticket, which shall be taken down by the clerks, in the presence of the said returning officer and inspectors, and if there should appear two tickets rolled up together, or if any ticket shall contain the names of more persons than such elector had a right to vote for, in either of these cases, such ticket shall not be numbered, but shall be adjudged void; and when the tickets shall be numbered, the persons having the greatest number of ballots, shall be declared duly elected; but when two persons shall have an equal number of votes, the returning officer shall have the casting vote, but shall not vote in any other case whatsoever; and it shall be the duty of the said returning officer, to certify in writing the names of the persons duly elected, which certificate shall be delivered to each representative so elected as aforesaid.

*Ib. Sec. 11.*  
List of voters  
to be made  
out.

§ 15. The returning officer, within ten days after any election, shall, at the request of any person elected to serve in the general assembly, or to congress, or other person in his or their behalf, cause a true copy of the list of voters, and the number of votes for each candidate to be made out, certified, and signed by him, and delivered to the person requesting the same; and if any returning officer shall refuse so to do, or shall hold elections in any other manner than is by this act directed, or shall neglect or refuse to make returns of the elections held by him, he shall forfeit and pay the sum of one thousand dollars, to be recovered by action of debt in any court having jurisdiction thereof; one-half to the use of the county in which such election shall have been held, and the other half to the use of the person who shall sue for the same.

Penalty for  
neglect, &c.

*Ib. Sec. 12.*  
Ballots for  
congress to  
be numbered

§ 16. After the election shall be closed, it shall be the duty of the managers of said elections, to number the ballots given for each candidate to congress, and cause the same to be taken down by the clerks thereof.

*Ib. Sec. 15.*  
Bribery pro-  
hibited.

§ 17. Any person, elected to serve in the house of representatives of this state, who shall, either directly or indirectly, give, or agree to give, to any elector, money, meat, drink, or other reward in order to be elected, or for having been elected for any county, shall be expelled.

*Ib. Sec. 18.*  
Inspectors to  
suppress  
riots.

§ 18. The inspectors of elections shall take care that such elections shall be conducted fairly and agreeably to law: they shall endeavor to prevent all riotous and disorderly behavior, and for this purpose shall have authority to commit to prison, for a period not exceeding two days, any person or persons, who shall, by such riotous or disorderly behavior, disturb the fair and legal course of such election; and they shall read, or cause to be read aloud, at the courthouse door, by the returning officer, this act, immediately after the polls are opened.



§ 19. When the inspectors or managers of an election, or any of them, shall have reason to doubt the competency of any person offering to vote, it shall be their duty to administer to such person, so offering to vote, an oath or affirmation, touching his qualification, as ascertained by the fifth section of the third article of the constitution of this state.

§ 20. Hereafter the court-house shall be the place of holding general elections, in each and every county throughout this state, for the purpose of electing governor, members of congress, members of the general assembly, sheriffs, and clerks. The election at the court-house as aforesaid, shall be holden on the first Monday in August, in each and every year.

§ 21. The election, holden at other places than the places of holding the general elections in each county, shall continue open to receive votes, the first day of the general elections only:<sup>1</sup> and, on the second day of said election, it shall be the duty of the managers, on the close of every election, to count out the tickets. Each manager shall take a memorandum of the number of votes each candidate may obtain, and forward to the managers at the court-house, by the returning officer, a certified statement of the polls of such election; and the managers, aforesaid, shall return all the tickets, so counted, into the election box, together with the clerk's list of voters, seal, and safely keep it twenty days. And, in case of contested elections, one of said managers shall forward the box, containing the tickets, to the principal managers at the court-house.

§ 22. The elections, aforesaid, shall be conducted by the sheriff, and managers appointed in the same manner as heretofore by law directed. And if the sheriff shall fail to make a return of the election to the seat of government, in manner and form as by the constitution directed, within the first three days of the session of the general assembly next immediately succeeding such election, he shall forfeit and pay the sum of one thousand dollars, to be recovered by suit, prosecuted by the attorney general; and when recovered, paid into the public treasury for the use of the state.<sup>2</sup>

§ 23. In addition to the duties heretofore required to be performed by the said managers of the elections, they shall also be required to number the vote or ballot of each and every voter, with the same number that such voter stands marked or enrolled on the lists of the clerks to said elections; the votes from every place of holding said elections, after having been counted, shall be filed separately, for the space of twenty days, except in the counties of Covington, Henry, and Pike, where they shall be preserved for sixty days<sup>a</sup> at the end of which time, the said votes shall be destroyed by the managers of the several elections, unless notice shall be given to the said managers, that some part or parts of said election will be contested; then and in that case, it shall be the duty of the said managers to seal, in one box or packet, the said separate files, and forward the same to the secretary of state, on or before the first day of the next succeeding session of the general assembly, to be used in evidence by those whose duty it shall be to decide contested elections.

§ 24. The managers of the several elections, in addition to the oath heretofore prescribed by law, shall also swear, that "they will

1833—(18)  
Sec. 1.  
Test oath by  
the managers.

1819—(8)  
Sec. 1.  
Court-  
houses,  
places of  
holding  
election.  
When held.

Ib. Sec. 2.  
Time for re-  
ceiving  
votes at  
election pre-  
cincts.

Duty of  
managers.

Contested  
elections.

Ib. Sec. 3.  
Penalty on  
the sheriff  
for failing to  
make re-  
turns.

Ib. Sec. 4.  
Additional  
duties of  
managers.

To number  
the ballots.

a Jan. 1, 1823.  
Votes to be  
destroyed,  
except in  
cases of con-  
tested elec-  
tions, when  
they shall be  
forwarded to  
the secretary  
of state.

Ib. Sec. 5.  
Additional  
oath of man-  
agers.

<sup>1</sup> Before the act of 1820, the polls were required to be kept open for receiving votes, at the court-house in each county, during two successive days.

<sup>2</sup> See § 30.



not themselves, or knowingly suffer any other person, to compare the number of said ballots with the number of the votes enrolled by the clerks as aforesaid, but faithfully to discharge the requisitions of this act, strictly and impartially."

1820—(5)  
Sec. 1.  
Polls kept  
open one  
day only.

§ 25. In all elections, hereafter to be holden in this state, for governor, members of congress, members of the general assembly, sheriffs, and clerks, the polls shall be kept open but one day, for receiving votes, at the different places of holding courts in each county only, as well as at the different precincts.

*Ib.* Sec. 2.  
Hour for  
closing polls  
at C. H.

§ 26. The polls shall be kept open at the elections to be held at the different places of holding courts in each county, till the hour of five o'clock in the afternoon of said day.

1826—(10)  
Sec. 1.  
Sheriff to  
summon a  
justice to at-  
tend each  
precinct.

§ 27. Hereafter it shall be the duty of the sheriff, or other returning officer of any general election, to summon one justice of the peace of the county where the election is to be held, to attend at each election precinct of said county, for the purpose of qualifying the managers appointed to such election precinct.

*Ib.* Sec. 2.  
On failure of  
justice sum-  
moned, man-  
agers may  
apply to  
another.

§ 28. In case any justice of the peace fails to attend and qualify the managers at any precinct, according to the provisions of this act, then it shall be the duty of the managers to apply to any other justice of the peace, whose duty it shall be to qualify the managers of such election.

1828—(24)  
Sec. 1.  
Returns for  
the purpose  
of getting  
commis-  
sions.

§ 29. The clerks of the county courts shall, in all returns to the office of the secretary of state, upon which commissions are to be issued, if to fill a vacancy, name the person and cause of such vacancy in said return:—if an original appointment, the return shall so express it.

1829—(14)  
Sec. 2.  
Penalty on  
returning  
officer for  
failing to  
make return.

§ 30. Every sheriff or other officer, whose duty it is or may be to make return of elections, and who shall willfully fail, refuse, or neglect to make such return to the proper officer within the time prescribed by law, shall forfeit and pay the sum of five hundred dollars, to be recovered by action of debt in any court having jurisdiction thereof, to be sued for in the name of the state of Alabama, and applied to the use of the proper county; and it shall be the duty of the attorney general or solicitor of the proper circuit to prosecute for the same; and it shall be the duty of the officer, to whom such return should have been made, to certify such failure to the prosecuting attorney of the proper circuit.

1829—(18)  
Sec. 1.  
Vacancies  
occurring in  
general as-  
sembly dur-  
ing its ses-  
sion, or with-  
in sixty days  
before.

§ 31. In case of any vacancy, which may arise in either branch of the general assembly, by death, resignation, or otherwise, the governor, or person exercising the duties of that office, may issue writs of election to fill such vacancy, by giving such notice as he may think proper, not less than ten days', which election shall, in all other respects, be governed by the laws of this state on that subject.

1839—(16)  
Sec. 23.  
Returning  
officer failing  
to attend,  
how one  
shall be ap-  
pointed.

§ 32. If, at any general election, the returning officer, appointed to hold said election, shall fail to attend at the proper time and place, the managers present, if any, may appoint a returning officer; and if there be no manager or managers present, then three householders or freeholders may proceed to appoint a returning officer, and open the polls, and hold said election, and if no justice of the peace should attend to qualify the managers, then the returning officer (whether appointed by the sheriff, managers, householders or freeholders) shall qualify the managers and hold the election according to law; and every election so held shall be valid to all intents and purposes.



§ 33. It shall be the duty of the managers of elections, at the different precincts in each and every county in this state, within three days after the election, to forward to the clerk of the county court of their respective counties, the list of persons who shall have voted at the election of which they were managers, which list shall be certified by said managers or a majority of them, and also the clerk, who may have acted as such, at such precinct; and it shall be the duty of the clerk of the county courts of the different counties in this state, to preserve said list in their offices, for one year next after the election; and they shall permit any person to inspect and compare the list of names, from the different precincts, in the clerk's office, free of charge.

1842—(1)  
Sec. 1.  
Managers of elections to forward list of voters to county clerk, within three days.

Clerk to keep list one year after election, for inspection, free of charge.

§ 34. It shall be the duty of the grand jury of each and every county in this state, to examine, at each term of the circuit court, the list aforesaid, and if they find, that any fraud has been practiced, or that any person, not qualified to vote, according to the constitution and laws governing in each election, has voted, or that any person has voted more than once in the same election, or that there has been any other violation of the laws and constitution, in such case made and provided, then the said grand jury shall make presentment thereof, upon which the solicitor shall file his indictment, as in other cases.

Ib. Sec. 2.  
Grand jury to examine said list, and present violators of law, and the solicitor to indict them.

§ 35. If hereafter any person or persons, not being a qualified voter under the laws and provisions of the constitution of this state or of the United States, applicable to each particular election, shall vote in such election, the person so offending, shall be guilty of a misdemeanor, and on conviction thereof, on indictment in the circuit court, shall be fined three hundred dollars, and in default of payment thereof, shall be imprisoned in the county jail not exceeding three months.

Ib. Sec. 3.  
Person voting illegally, on conviction, to be fined \$300, & not paying, imprisoned 3 months.

§ 36. If any person shall, in the same election, being a qualified or unqualified voter, give more than one vote, every person, so offending, shall be guilty of a misdemeanor, and on conviction thereof, on indictment in the circuit court, shall be fined in any sum not less than three hundred, nor more than five hundred dollars, and in default of the payment of said fine, shall be imprisoned in the county jail, any term not less than three, nor more than twelve months, at the discretion of the jury trying the same.

Ib. Sec. 4.  
Person voting more than once in same election, subject to fine, not less than \$300, nor more than \$500, or imprisonment.

§ 37. In any election in this state, it shall be unlawful for any voter to vote out of the county of his residence; and if any person shall violate the provisions of this section, he shall be deemed guilty of a misdemeanor, and on conviction thereof, on indictment in the circuit court, shall be fined in any sum not less than two hundred dollars, nor more than four hundred dollars, and, on default of the payment of the fine assessed, shall be imprisoned in the county jail, a term not less than one month, nor exceeding four months, at the discretion of the jury trying the same.

Ib. Sec. 5.  
Unlawful to vote out of county of residence.

Penalty.

§ 38. Any person imprisoned under the third, fourth and fifth sections of this act, shall only be discharged therefrom, by the payment of the fine assessed against him by the jury, and not by taking the insolvent debtor's oath.

Ib. Sec. 6.  
Person imprisoned under § 3, 4, & 5 of this act only to be discharged on payment of fine.

§ 39. If the managers of elections shall fail, neglect, or refuse, to comply with the requisitions of this act, they and each of them, for every such default, shall forfeit to the state, for the use of the county in which such default shall have happened, the sum of one hundred dollars, to be recovered on motion of the solicitor of the proper circuit, in the circuit court of the proper county; and in all cases, where

Ib. Sec. 7.  
Manager, not complying with requisitions of this act, to forfeit \$100.



Clerk to give defaulting manager notice of motion against him.

Notice to be served by sheriff.

*Ib. Sec. 9.*  
Act to be published.

*Ib. Sec. 10.*  
Naturalized citizens not required to show certificate, but may make oath in writing. Swearing falsely, perjury.

*Ib. Sec. 11.*  
Managers, refusing vote of foreigner on affidavit of naturalization, to forfeit \$100, each.

any of the managers of elections shall fail to comply with the provisions of this act, it shall, within ten days after the election of which they were managers, be the duty of the clerk of the county court, to issue a notice, signed by himself as clerk of the county court, to the manager or managers in default, informing him or them, that at the next circuit court, the solicitor, in behalf of the state, for the use of the county, will move the court for a judgment for one hundred dollars, against each of the managers, for the violation of the provision of an act, entitled "An Act to prevent frauds in elections;" which notice shall be served by the sheriff of the county, and shall be sufficient to authorize the circuit court to render judgment upon the solicitor's motion: *Provided*, That all reasonable excuses shall be heard and determined by the court and jury trying the same, for the non-performance of the duties required by this act.

§ 40. It shall be the duty of the governor, to cause this act to be published four times, in one newspaper in each county in the state, where a paper is published.

§ 41. Naturalized citizens shall not be required to produce a certificate of their naturalization, but in all cases, when required, shall make oath, in writing, of the time and place when naturalized; which oath shall be filed with the clerk of the county court of the proper county; and any person or persons, swearing falsely under the provision of this section, shall, on conviction, be subject to all the pains and penalties of perjury: *Provided*, That nothing, herein contained, shall be construed to affect any prosecution or proceeding, now pending, against any person or persons, for violations of the laws on the subject of elections, but said person or persons shall be punished on conviction, according to the laws heretofore in force.

§ 42. In all elections, hereafter to be held in the state, when any person of foreign birth shall offer to vote at said election, and he is willing to subscribe to and take the oath recited in the 10th section of this act, such person shall be permitted to do so; and upon refusal of the managers, or a majority of them, to permit the same, said managers, so refusing, shall, upon conviction before any court having jurisdiction of the same, be fined in a sum of one hundred dollars, each, one half to enure to the prosecutor, and the other half to be deposited in the treasury of the county, for county purposes.

## CONGRESSIONAL ELECTIONS.

1843—(20)

§ 1. *Be it enacted, &c.* That the state be, and is hereby divided into seven congressional districts, to wit:

1st District.

The first district shall be composed of the counties of Mobile, Washington, Baldwin, Clarke, Monroe, Conecuh, Butler, Wilcox and Marengo:

2d District.

The second district, of the counties of Covington, Dale, Henry, Coffee, Pike, Barbour, Macon, Montgomery and Russell:

3d District.

The third district, of the counties of Dallas, Lowndes, Autauga, Perry, Bibb, Jefferson, Shelby and Coosa:

4th District.

The fourth district, of the counties of Greene, Sumter, Pickens, Tuskaloosa and Fayette:

5th District.

The fifth district, of the counties of Limestone, Lauderdale, Franklin, Lawrence, Morgan, Marion and Walker:



The sixth district, of the counties of Madison, Jackson, Mar-6th District. shall, De Kalb, Blount and St. Clair :

The seventh district, of the counties of Cherokee, Benton, Talla-7th District. dega, Randolph, Chambers and Tallapoosa.

§ 2. The sheriffs of the counties of Clarke, Pike, Bibb, Tuskaloo-Who shall be  
sa, Lawrence, Marshall and Talladega, shall be the returning officers returning  
of their respective congressional districts ; and the sheriffs of the officers.  
other counties in their districts shall make returns to the returning  
officers above mentioned.

§ 3. Each of the aforesaid districts shall be entitled to elect one One repre-  
representative to the congress of the United States, who shall be sentative to  
chosen by the persons qualified to vote for the members of the gen- each district.  
eral assembly of this state.

§ 4. If, at any time, the president of the United States shall issue When the  
his proclamation for an extra session of congress, to be held between governor  
the fourth day of March, (when the term of service of members of may order a  
the house of representatives of the congress of the United States ex- special  
pires,) and the time of holding the general election in this state, the election.  
governor shall cause elections to be held for members of congress, at  
an earlier period than the time prescribed by law, giving at least  
twenty days' notice thereof, by proclamation, to be published in as  
many newspapers as he may think proper.

§ 5. The elections aforesaid shall be in accordance with the ex-Ib. Sec. 6.  
isting laws of this state. Elections,  
how held.

§ 6. The election of representatives, from this state to the con-1822—(10)  
gress of the United States, shall be held at the same times and Sec. 2.  
places, and be regulated and conducted by the same law for holding Representatives  
elections for members to represent the several counties in the general to con-  
assembly of this state, and at the same times and places every two gress, when  
years thereafter ; all of which elections are to be conducted by the and how  
sheriffs, or by other persons legally appointed therefor, in like man- elected.  
ner as the annual elections of the members of the state legislature ;  
and the person, having the greatest number of votes in any of the  
aforesaid districts, shall be the member for that district in the con-  
gress of the United States.

§ 7. The managers of each election, which may be held for the Ib. Sec. 3.  
several counties in this state, shall keep a separate box, in which Managers to  
shall be deposited the ballots for a representative from this state to keep a sepa-  
congress. rate box for  
ballots.

§ 8. Immediately upon the close of the elections in each county, Ib. Sec. 4.  
the presiding officer at each place of election shall, in the presence Elections,  
of the inspectors, proceed to count, in a public manner, the ballots, how con-  
and shall keep an account in writing, of the number of votes each ducted.  
candidate or person voted for shall have, and in presence of the in-  
spectors, cast up the scrolls, and make a correct statement of the  
number of votes given thereat, for each candidate or person voted  
for in each county ; which shall be certified by the sheriff, or other  
persons appointed to conduct the elections, and a majority of the in-  
spectors.

§ 9. The managers of the several election precincts, in each of Ib. Sec. 5.  
the counties composing the several election districts throughout this Managers  
state, where counties have more precincts than one, shall make shall make  
returns to the sheriffs at the court-houses or seats of justice in their returns to the  
respective counties, within two days thereafter, and the managers sheriff within  
aforesaid shall return all the tickets, so counted out, into the election two days  
box, together with the clerks' lists of votes sealed up, to the princi- after the  
pal managers at the court-house in their respective counties ; and it election.



Votes to be destroyed unless election is contested.

shall be the duty of the said managers, to keep said election boxes, thus returned to them, for the space of sixty days, at the end of which time, the said votes shall be destroyed by the managers of the elections held at the court-houses in each county; unless notice shall be given to said managers, that some part or parts of said election will be contested; in that case it shall be the duty of said managers to preserve the same.

[a 1898—(11) Sec. 2.]  
Mode, place, and time of examining and comparing the polls in theseveral counties of each district.

a The sheriffs, or other returning officers of the counties of each district, shall meet on the third Monday of September, next after each election, at the court-house of the county first mentioned in their respective districts; and when said sheriffs, or other returning officers shall meet, the polls for the different counties shall, by said sheriffs or other returning officers, (as the case may be,) in the presence of two justices of the peace, who are to be summoned by the sheriff or other returning officer of the county where they shall meet

Certificate to the candidate elected.

for that purpose, be examined and compared, and a certificate, under the hands and seals of said returning officers, shall be given to the candidate in each district, for whom the greatest number of votes shall have been given in each district: but if two or more candidates shall have an equal number of votes, the returning officer in each district mentioned, shall determine which of them shall be the representative, and a certificate thereof shall be given by the returning officers, accordingly.

Returning officer of first county to have a casting vote where the votes are equal.  
Ib. Sec. 8. Governor to commission those elected.

§ 10. When any person shall be duly elected representative, under this act, and have obtained a certificate of his election, which shall be signed by a majority of all the returning officers of the district, the governor, on such certificate being produced to him, shall issue a commission, certifying his appointment as a representative of this state to the congress of the United States.

Ib. Sec. 9. Compensation of returning officers.

§ 11. Every sheriff, or returning officer, shall be allowed the sum of three dollars, for every day he shall necessarily attend, for the purpose of comparing said polls, and also the amount of his ferriages; which shall be paid by the treasurer of the state, on affidavit of the sheriff or returning officer aforesaid.

Ib. Sec. 10. Persons eligible.

§ 12. No person shall be eligible, as a representative to congress, from any of the aforesaid districts, who is not, at the time of his election, a resident citizen of the district in which he is elected.

Ib. Sec. 12. Vacancies, how filled.

§ 13. When any vacancy shall happen by death, resignation, or otherwise, in the representation of the people of this state, in the house of representatives of the United States, the governor of this state, or the person exercising the powers thereof, shall issue his writ or writs of election, to the sheriffs of the counties of which the congressional district is composed, commanding such sheriffs, on a certain day therein particularly expressed, to hold an election to supply such vacancy; and such writs, so issued by the governor, shall be delivered to the sheriffs, to whom the same may be directed, at least thirty days before the day appointed for such election, who shall give public notice thereof throughout the county, at least twenty days before such election; and such elections shall be holden and conducted in the same manner as the general elections are, for electing representatives to the congress of the United States.



## MODE OF CONTESTING ELECTIONS.

*Acts consolidated.*

§ 1. WHEN any person, being a qualified voter of the proper county or district, shall contest the election of any one, who may be declared to be elected as a member to either branch of the general assembly of this state, it shall be his duty to give the person, whose election he disputes, a notice in writing, setting forth the grounds for such contest; which notice shall, by the sheriff, coroner, or some constable of the proper county, be served personally upon the party whose election is contested, or a copy thereof left at his usual place of residence, within thirty days after the day upon which said election shall have been holden.

1830—(10)  
*Sec. 1.*  
 How to commence contest of election of member of the general assembly.

§ 2. The evidence, which may be desired by either party in the prosecution or defence of any contest as aforesaid, shall be taken by deposition, as follows: the party wishing the evidence of any witness, shall apply to a justice of the peace of the county where the witness resides, for a subpoena to said witness, to appear before him or any other justice, at a certain time and place not less than five days from the issuance thereof; of which time, place, and object, said justice shall notify the opposite party at least five days.

1827—(27)  
*Sec. 2.*  
 Mode of taking testimony.

§ 3. Notices to take depositions by either party, may be served by the sheriff, coroner, or any constable of the proper county, by leaving a copy at the usual place of residence of the party, against whom the testimony is to be used.

1830—(10)  
*Sec. 2.*  
 Notice to take depositions, how served.

§ 4. Any justice of the peace, before whom a witness may be summoned for the purpose aforesaid, shall take down in writing all that the witness deposes in relation to the matter at issue, and also the questions that may be propounded by either party or his attorney, and the answers thereto; and shall, after filing away a true copy of the whole deposition in his office, carefully seal up and transmit the original, by mail, to the president of the senate, or the speaker of the house of representatives, as the case should be, at the seat of government.

1827—(27)  
*Sec. 3.*  
 Justice to file a copy of the testimony in his office, & transmit the original to the seat of government.

§ 5. The deposition of any witness, residing out of this state, may be taken in a contest, as aforesaid, in the same manner they are now taken of a like witness, in suits at law.

*lb. Sec. 4.*  
 Witnesses residing out of the state.

§ 6. The aforesaid officers and witnesses shall receive for their services and attendance under this act, the same fees and compensation now allowed them for similar services and attendance in other cases, which fees and compensation shall be paid by the party contesting.

*lb. Sec. 5.*  
 Compensation of officers and witnesses.

§ 7. It shall be the duty of the returning officer, within ten days after any election, at the request of any person contesting an election, or desirous of contesting the same, to cause a true copy of the list of voters, and the number of votes for each candidate, to be made out, certified and signed by him, and delivered to the person requesting the same, and for which he shall have a right to demand and receive twelve and one-half cents for each hundred words contained in said copy, from the person for whom it is made, before he shall be compelled to deliver the same; and any returning officer, who fails or refuses to comply with this duty, shall, on conviction, be liable to be indicted and fined in such sum as a jury shall assess, not less than five hundred dollars.

1830—(10)  
*Sec. 4.*  
 Returning officer to furnish contesting party with a list of voters.

§ 8. When any election shall be holden, either for a justice of the peace, or a constable, within the limits of any captain's company, in the several counties in this state, it shall be the duty of the persons

1823—(13)  
*Sec. 1.*  
 Elections of justice and constable.



When election is contested, the managers to preserve the votes, and return them to clerk of county court

holding such election, to retain in their possession, sealed up and secured, the tickets or votes given in at such election, for the space of fifteen days; and should notice be given to them within that time, by any of the candidates, that the election will be contested, then to make return of all the tickets or votes, given in at any such election, to the clerk of the county court, who shall keep the same, together with their certificate of the person elected, for the space of fifteen days, in order that said elections may be contested by any one being a candidate: *Provided*, That if the notice, as aforesaid, should not be given to the persons aforesaid, within the period aforesaid, it shall be their duty to destroy the tickets or votes, as is now in other cases prescribed by law.

*Ib. Sec. 2.*  
Party contesting to notify clerk, and clerk to notify the other candidates.

§ 9. When any election for justice or constable, as aforesaid, shall be contested, the person or persons contesting the same, shall, within the said fifteen days, notify the clerk of the county court, in writing, of such his intentions:—it shall be the duty of the clerk to issue a summons to all the candidates, offering either to fill justices' places or constables', as the case may be, requiring them to appear on a certain day in said county court, and show cause, if any they have, why the certificate of the election should not be returned, as is now required by law.

*Ib. Sec. 3.*  
Judge of county court and two justices to decide the election.

§ 10. It shall also be the duty of the clerk, to issue a summons to any two justices of the peace, requiring them to attend on the same day with the candidates, and to sit with the judge of the county court; who, or a majority of whom, shall have full power to hear and determine, whether the said election has been legally or illegally conducted; and if, in their opinion, such election has been lawfully conducted, they shall direct the clerk to send on a certificate to that effect, certifying to the governor the person duly elected; and should they determine the election to be void, upon a full hearing of all the facts and circumstances, they shall order the clerk to certify the same to the captain in whose company the election was held, who shall thereupon order a new election.

1840—(20)  
*Sec. 1.*  
Who may contest election of sheriff, clerks of circuit or county courts, and how to proceed.

§ 11. When any election shall be holden for sheriff, clerk of the circuit court, and clerk of the county court, in any of the several counties of this state, and any person, being a qualified voter, shall desire to contest the same, it shall be his duty to give the person, whose election he disputes, a notice in writing, setting forth the grounds of such contest; which notice shall be served by the sheriff, coroner, or some constable, personally, upon the party whose election is contested, or a copy thereof be left at his usual place of residence, within twenty days after the day upon which said election shall have been holden.

*Ib. Sec. 2.*  
Evidence to be taken by deposition.

§ 12. The evidence, which may be desired by either party, shall be taken by depositions, and by giving the proper notices, as are now prescribed by law in the case of a contested election for members to the legislature.

*Ib. Sec. 3.*  
Managers to retain tickets sealed up, &c. for 20 days.

§ 13. When any election shall be holden, in any of the counties of this state, for sheriff, clerk of the circuit court, and clerk of the county court, it shall be the duty of the managers holding such election, to retain in their possession, sealed up and secured, the tickets or votes given in at such election, for the space of twenty days; and should notice be given to them, within that time, by any of the candidates, that the election will be contested, then to make return of all the tickets or votes, sealed up as aforesaid, given in at any such election to the judge of the circuit court, who shall keep the same, together with the certificate of the person elected, for the

If notice be given that election will be contested, managers to return tickets to judge of circuit court.



space of twenty days, in order that said election may be contested by any one being a candidate : *Provided*, That if the notice as aforesaid should not be given to the person aforesaid, within the period aforesaid, it shall be his duty to destroy the tickets or votes, as is now in other cases prescribed by law.

§ 14. It shall be the duty of the judge of the circuit court, after the coming in of the testimony, so taken as aforesaid, to hear and determine whether the said election has been legally or illegally conducted ; and if, in his opinion, such election has been lawfully conducted, he shall certify the fact to the governor, who shall thereupon commission the person in whose favor the certificate appears ; and should the judge of the circuit court determine the election to be void, upon a full hearing of all the facts and circumstances, and certify the same to the governor, the governor shall, thereupon, order a new election.

*ib. Sec. 4.*  
Duty of  
judge after  
the testimo-  
ny comes in.

## ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

*Acts consoli-  
dated.*

§ 1. THERE shall be held, in each county in this state, an election for electors of president and vice-president, of the United States, on the second Monday of November, in every fourth year ; which election shall be held, in the same manner, at the same places, by the same officers, and under the same rules and regulations as the elections for members of the general assembly.

1827—(29)  
*Sec. 1.*  
Elections  
every fourth  
year on 2d  
Monday in  
November.

§ 2. The persons, qualified to vote for members of the general assembly, shall be entitled to vote at such election to be held as aforesaid : *Provided, however*, They shall be entitled to vote in any county in this state, and may elect such number of electors as the state shall by law be entitled to, at the time of holding such election ; and should any ticket contain more names than the number of electors to which the state shall be then entitled, the persons first named in such ticket, constituting the requisite number, shall be considered the only persons voted for.

1823—(21)  
*Sec. 2.*  
Who entitled  
to vote, and  
where,  
[a 1832—(22)  
*Sec. 2 & 3.*]  
To elect such  
members as  
the state is  
entitled to.

§ 3. The sheriff of each county, or other officer duly qualified, shall, with the managers of said election, within two days after holding the same, ascertain, by faithful addition and comparison, the number of votes given for every person who shall be voted for as an elector, and shall reduce the same to writing, in words, and not in figures ; and the said sheriff, or other returning officer, shall, under his hand and seal, certify the same in substance, as follows, to wit : "I, A. B., sheriff, (or returning officer, as the case may be) do hereby certify, that an election was held on the second Monday of November, eighteen hundred and \_\_\_\_\_ for electors of president and vice-president of the United States, agreeably to law ; and the following contains a true statement of the votes of the county of \_\_\_\_\_ for the following persons as electors for the State of Alabama, to wit : for A. B. \_\_\_\_\_ votes ; for C. D. \_\_\_\_\_ votes ; (and so on to the number voted for : ) Given under my hand and seal, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord, one thousand eight hundred and \_\_\_\_\_"

*ib. Sec. 4.*  
Sheriff and  
managers to  
cast up the  
votes.

Form of the  
sheriff's cer-  
tificate.

§ 4. The said sheriff, or other returning officer, shall, within twelve days thereafter, deliver, or cause to be delivered, his return and certificate, made as aforesaid, to the governor or secretary of state, at the seat of government, under the penalty of one thousand

*ib. Sec. 5.*  
Return,  
when and to  
whom made  
Penalty for  
failure.



dollars, to be recovered by action of debt, in any court having jurisdiction, in the name of the governor : which action shall be brought by the attorney-general or solicitor in whose circuit such returning officer, so failing, shall reside.

*Ib. Sec. 7.*  
Governor to  
examine re-  
turns and  
give notice  
of election.

§ 5. The governor shall, in the presence of the secretary of state, comptroller, and treasurer, or either of them, in the absence of the others, examine and count all the votes given and returned for electors of president and vice-president of the United States, and forthwith proceed to give notice to said electors, who shall be elected, by proclamation, or otherwise.

*Ib. Sec. 8.*  
Sheriff's  
compensa-  
tion.

§ 6. Each sheriff, or returning officer, shall be allowed for his services, the same that such officers are allowed for making returns of members of congress.

1837—(29)  
Sec. 2.  
Electors,  
when and  
where to  
meet & vote.  
[a 1832—(33)  
Sec. 1.]  
Those at-  
tending, may  
fill vacancies

§ 7. The electors so chosen, shall meet at Tuscaloosa, on the first Wednesday in December, 1828, and give their votes in such manner as is prescribed by the laws of the United States : and in like manner, the electors, chosen every fourth year thereafter, shall meet and vote as prescribed in the first clause of this section.<sup>a</sup> Where the whole number of electors shall not attend at the place appointed for giving in their votes on the day of election, it shall be the duty of those in attendance, before they proceed to vote, to appoint so many additional electors as may be absent, either by death, refusal to act, removal from the state, or any other cause :—and the electors so appointed, shall proceed to vote in the same manner as if elected by the people.

1834—(12)  
Sec. 1.  
Electors'  
compensa-  
tion.

§ 8. Each elector of president and vice-president of the United States shall be entitled to receive four dollars for every day's necessary attendance at the seat of government, and four dollars for every twenty miles traveling to and from the same ; and in that proportion for a shorter distance ; to be paid out of any moneys in the treasury not otherwise appropriated.

## ENUMERATION AND APPORTIONMENT.

Con. Ala.  
—Art. 3.  
Sec. 9.  
Enumera-  
tion, when  
and how  
made.

Apportion-  
ment of rep-  
resentation.

*Ib. Sec. 10.*  
Senate ap-  
portioned.

§ 1. THE general assembly shall, at their first meeting, and in the years one thousand eight hundred and twenty, one thousand eight hundred and twenty-three, one thousand eight hundred and twenty-six, and every six years thereafter, cause an enumeration to be made of all the inhabitants of the state, and the whole number of the representatives shall, at the first session held after making every such enumeration, be fixed by the general assembly, and apportioned among the several counties, cities, or towns, entitled to separate representation, according to their respective numbers of white inhabitants ; and the said apportionment, when made, shall not be subject to alteration, until after the next census shall be taken.

§ 2. The general assembly shall, at the first session after making every such enumeration, fix by law the whole number of senators, and shall divide the state into the same number of districts, as nearly equal in the number of white inhabitants as may be, each of which districts shall be entitled to one senator and no more : *Provided*, That the whole number of senators shall never be less than one-fourth, nor more than one-third of the whole number of representatives.



§ 3. When a senatorial district shall be composed of two or more counties, the counties, of which such district consists, shall not be entirely separated by any county belonging to another district ; and no county shall be divided in forming a district. Th. Sec. 11.  
Senatorial  
districts.

§ 4. The representatives of the several counties shall be apportioned at a ratio of twenty-nine hundred and forty-nine white inhabitants to a representative, and shall be apportioned among the several counties in the following manner, to wit : 1839—(17)  
Sec. 1.  
Ratio.

|                                                      |                                                                             |
|------------------------------------------------------|-----------------------------------------------------------------------------|
| To the county of Jackson, four representatives :     | Apportion-<br>ment of rep-<br>resentatives<br>to the sever-<br>al counties. |
| To the county of Madison, four representatives :     |                                                                             |
| To the county of Limestone, two representatives :    |                                                                             |
| To the county of Lauderdale, three representatives : |                                                                             |
| To the county of Franklin, three representatives :   |                                                                             |
| To the county of Lawrence, three representatives :   |                                                                             |
| To the county of Morgan, two representatives :       |                                                                             |
| To the county of Marshall, two representatives :     |                                                                             |
| To the county of DeKalb, two representatives :       |                                                                             |
| To the county of Marion, one representative :        |                                                                             |
| To the county of Fayette, two representatives :      |                                                                             |
| To the county of St. Clair, one representative :     |                                                                             |
| To the county of Jefferson, two representatives :    |                                                                             |
| To the county of Blount, two representatives :       |                                                                             |
| To the county of Cherokee, two representatives :     |                                                                             |
| To the county of Benton, three representatives :     |                                                                             |
| To the county of Talladega, two representatives :    |                                                                             |
| To the county of Randolph, one representative :      |                                                                             |
| To the county of Pickens, three representatives :    |                                                                             |
| To the county of Sumter, three representatives :     |                                                                             |
| To the county of Tuskaloosa, four representatives :  |                                                                             |
| To the county of Walker, one representative :        |                                                                             |
| To the county of Bibb, two representatives :         |                                                                             |
| To the county of Shelby, two representatives :       |                                                                             |
| To the county of Coosa, one representative :         |                                                                             |
| To the county of Tallapoosa, one representative :    |                                                                             |
| To the county of Chambers, two representatives :     |                                                                             |
| To the county of Russell, one representative :       |                                                                             |
| To the county of Macon, one representative :         |                                                                             |
| To the county of Montgomery, two representatives :   |                                                                             |
| To the county of Autauga, two representatives :      |                                                                             |
| To the county of Dallas, two representatives :       |                                                                             |
| To the county of Perry, three representatives :      |                                                                             |
| To the county of Greene, three representatives :     |                                                                             |
| To the county of Marengo, two representatives :      |                                                                             |
| To the county of Washington, one representative :    |                                                                             |
| To the county of Clarke, one representative :        |                                                                             |
| To the county of Mobile, four representatives :      |                                                                             |
| To the county of Baldwin, one representative :       |                                                                             |
| To the county of Monroe, two representatives :       |                                                                             |
| To the county of Conecuh, one representative :       |                                                                             |
| To the county of Wilcox, two representatives :       |                                                                             |
| To the county of Butler, two representatives :       |                                                                             |
| To the county of Lowndes, two representatives :      |                                                                             |
| To the county of Pike, two representatives :         |                                                                             |
| To the county of Covington, one representative :     |                                                                             |
| To the county of Barbour, two representatives :      |                                                                             |
| To the county of Henry, two representatives : and,   |                                                                             |
| To the county of Dale, one representative.           |                                                                             |



*Ib. Sec. 2.*  
Apportion-  
ment of sen-  
ators.

§ 5. The counties of Madison, Jackson, Limestone, Lauderdale, Lowndes, Franklin, Pickens, Tuskaloosa, Greene, Dallas, Sumter, Lawrence, Mobile, Montgomery, Perry, Talladega, Benton, Marengo, and Wilcox, shall, each, form one senatorial district; and,

The counties of Randolph and Chambers, one:

“ of Cherokee and DeKalb, one:

“ of Marshall and Blount, one:

“ of St. Clair and Jefferson, one:

“ of Morgan and Walker, one:

“ of Marion and Fayette, one:

“ of Russell and Barbour, one:

“ of Clarke, Baldwin, and Washington, one:

“ of Henry, Covington, and Dale, one:

“ of Macon and Tallapoosa, one:

“ of Monroe and Conecuh, one:

“ of Butler and Pike, one:

“ of Autauga and Coosa, one: and,

“ of Shelby and Bibb, one.

*Ib. Sec. 3.*

Returning  
officers.

§ 6. The sheriffs of the counties of Fayette, Tallapoosa, Morgan, Marshall, DeKalb, Benton, Chambers, Jefferson, Autauga, Barbour, Montgomery, Henry, Butler, Monroe, Bibb, and Clarke, shall be the returning officers of the senatorial districts, to which their counties are attached, and it is hereby made the duty of the sheriffs of the counties in each senatorial district, to make to the returning officer of the proper senatorial district, returns of the elections holden in their respective counties for senator, within ten days after any such election: and it shall be the duty of the returning officers of the different senatorial districts, to compare the returns so made to them and declare the election, make returns, and give certificates to the candidates elected, as is now provided by law.

## ESCAPE.

1812—(16)  
No judgment  
against offi-  
cer for an  
escape, un-  
less willful.

§ 1. No judgment shall be entered against any sheriff or other officer, upon any suit brought upon the escape of any debtor in his or their custody, unless the jury, who shall try the issue in the cause, shall expressly find that such debtor or prisoner did escape, with the consent or through the negligence of such sheriff, or other officer or officers, or that such prisoner might have been re-taken, and the sheriff and his officers neglected to make immediate pursuit.

1824—(11)  
Sec. 1.  
Judges to  
charge grand  
juries re-  
specting es-  
capes.

§ 2. The judges of the circuit courts in this state are hereby required, at each term of the circuit court in each and every county, to give particularly in charge to the grand jury, to inquire if any escape has been permitted, either negligently or voluntarily, by any jailer or prison keeper, within their county, and to present the same.

*Ib. Sec. 2.*  
The proof re-  
quired.

§ 3. In all cases of presentment or indictment for escapes, the proof of a legal commitment, and the escape, shall be sufficient to throw the burthen of proof, for exculpation, on the defendant.



ESCHEATS AND ESCHEATORS.

§ 1. THE estate, both real and personal, within this state, of persons, who have died intestate, or who may hereafter die intestate, leaving no lawful heir or heirs, shall be considered as escheated to the State of Alabama.

1816—(5)  
What property shall escheat.

§ 2. Each person, who is now, or may hereafter be, the judge of any county court within this state, is hereby appointed an escheator for the county, of the county court of which he is, or may be the judge, during his continuance in such judicial office; who shall execute his office of escheator in proper person, and not by deputy; and the duties of escheator are hereby annexed to those of the judges of the county courts, *ex officio*, and under the same official sanctions and obligations.

1823—(18)  
Sec. 1.  
Judges of county courts appointed escheators.  
[a 1824—(4)  
Sec. 1.]

§ 3. Where it shall appear that any person has died without will, and without heirs, leaving property behind, it shall be the duty of the escheator of the county where the property may be found, to issue his notification of such supposed escheated property, to the judge of the circuit court, at least two months previous to the meeting of said court in such county; and the judge, presiding at such court, shall cause the jury, (being first sworn) to proceed and make a true inquest of all such supposed escheated property, both real and personal, which by the escheator shall be subjected to their investigation, and a true verdict make thereon; whereupon the judge of the court aforesaid, shall certify the same, under his hand and seal, to the escheator, who shall record the same in a book to be by him kept for that purpose; and shall return the original, within two months after the date thereof, into the office of the clerk of the said circuit court, to be there filed and kept as a record of the said court.

Id. Sec. 4.  
Escheator to notify judge of the circuit court, of escheated property.

Proceedings on inquest.

§ 4. On returning the inquest into the office of the clerk of the court aforesaid, the clerk shall thereupon cause to be advertised, in one of the public gazettes of this state, the first week in every month, for six months, the particular description of the property, real and personal; the name of the person last seized and possessed; and the supposed time of his or her death, together with the part of the world in which he or she was known or supposed to be born, and requiring his or her heirs, or others, who may claim under him or her, to appear and make claim; and if no person shall appear and make right and title to the same, within twelve months after the expiration of the time prescribed for advertising the same, the clerk of the said court shall issue process, to be signed by the judge of the said circuit court, to the escheator, pronouncing the said property, both real and personal, to be escheated and vested in the state, and directing him forthwith to sell and convey the same according to law.

Id. Sec. 5.  
Property to be advertised.

and no person appearing to claim, it vests in the state.

§ 5. As soon as escheated property, either real or personal, shall be vested, as aforesaid, in this state, the escheator shall advertise the sale thereof in one of the public gazettes of this state, and also in two or more public places in the county, in which the property may be found, giving six weeks' public notice of the time and place of sale; and shall, at the time and place advertised, sell the said property on a credit of twelve months; and shall moreover take good and sufficient security for the purchase money, and a mortgage of the property, before the title to the said property shall be altered or changed; and it shall be

Id. Sec. 6.  
And shall be sold.



Proceeds to be paid into the state treasury.

the duty of every such escheator, to pay into the treasury of this state, the proceeds of every such sale, after deducting for his own use the commission hereinafter allowed to him, as a compensation for his services, on all moneys received by, and paid to him, on account of such sales, and the necessary expenses thereunto attached.

*Ib. Sec. 7.* Claimant to have possession of the property, on giving security.

§ 6. Any person or persons, without delay, shall be heard on issue to be made up in the circuit court, on a petition setting forth his, her, or their right; and the said property, either or both real and personal, shall be committed to him, her, or them, if he, she, or they shall show good evidence of his, her, or their title to hold until the right shall be found for the state or the claimant, such claimant finding sufficient security to prosecute his, her, or their suit, with effect and without delay, and to render to the state the yearly value of such property, if the right be found for the state; and where no claimant shall appear to make title as aforesaid, the escheator shall rent out the escheated property, if the same can be done with advantage to the state, until the process of escheat shall be concluded, and the property sold: *Provided*, That if any suit, for property supposed to be escheated, shall be prosecuted by any escheator, and the jury, before whom such trial shall be had, shall think there is no probable cause, the court, before whom the same shall be tried, shall award to the party aggrieved, his, her, or their reasonable and legal costs; to be paid out of any funds arising under or by virtue of this act.

If not claimed, to be rented out.

*Proviso.*

*Ib. Sec. 8.* Escheators' duty where escheated property is held by executor or administrator.

§ 7. Where money or other personal estate shall be found in the hands of an executor, or administrator, being the property of any person, heretofore deceased, or hereafter dying, and leaving no person entitled to claim according to the statute of distribution, and without making distribution of the same, the escheator of the county, where such chattels shall be found, shall and may, in behalf of the state, sue for and recover, either at law or in equity, any such money or other personal estate, and pay the money, which he may receive, or which may arise from the sale of any other personal estate which may come into his possession by virtue of any such suit, into the treasury of this state; and the escheator shall advertise the sale of any such personal property, which may come into his possession, for two weeks, in one of the public gazettes of this state; and also in two of the most public places in the county, in which the sale is to be made; and shall sell the same for cash at public auction, at the time and place so advertised. And the treasurer of this state, for the time being, shall advertise the payment, so made by any escheator into the treasury, in one of the public gazettes of this state, once in every month for six months, in like manner as escheated property is hereinbefore directed to be advertised, and if no person shall appear and make good title to such personal estate, within twelve months after the expiration of the time prescribed for advertising the same, other than as executor, administrator, or their legal representatives, then the money, which may have been recovered by the escheator, and the money, arising from the sale of any such personal estate, shall become vested in, and applied to, the use of the state.

Treasurer's duty in such case.

*Ib. Sec. 9.* Grants, &c., not to bar the claims of the state.

§ 8. Any possession, grant, conveyance, or any other cause or title, shall not preclude or hinder the state from making inquest or sale, after the manner hereinbefore prescribed, of all such property, both real and personal, as has heretofore escheated to the state, or may hereafter escheat, by the death of the person last seized or possessed, without will and without heirs.



§ 9. Nothing, herein contained, shall prejudice the rights of creditors, or other individuals having claims or legal titles, or who shall be under the disabilities of infancy, coverture, duress, lunacy, or being beyond the limits of the United States, until three years after such disabilities shall be removed.

§ 10. Each of the said escheators shall, as a compensation for his trouble, costs and charges, in discharge of his duty, be entitled to receive a commission of eight per cent. out of all moneys, which, in virtue of this act, shall be paid by him into the treasury; and where any person or persons shall appear and make title to lands or personal estate, after office found by the jury, the circuit court shall have power to make an allowance of such reasonable costs and charges, as the escheator hath sustained in promoting the claim of the state, except in cases where he had already received his compensation.

§ 11. If any escheator shall fail to do the duty required of him by this act, or any loss or damage shall accrue to this state by his misconduct or fraudulent practices, such escheator shall be responsible for all such loss or damage; and the circuit court of the county, wherein such escheator resides, shall have power and authority to order a prosecution in the name of the state; and the jury shall try the fact, and judgment shall be rendered against such escheator for any damages, which the jury may assess, together with the costs; and further, no escheator shall, directly, or indirectly, either by himself or any person whatsoever, purchase, or be concerned with any person or persons in purchasing, any escheated property, without being subject and liable to the payment of five thousand dollars: to be sued for and recovered in any court of record, one-half for the benefit of the informer, who shall sue for and recover the same, and the other half for the use of the state.

§ 12. Any sum or sums of money, which may hereafter be recovered by the several escheators of the state, shall be paid by them into the county treasury of the county, where the same shall or may be escheated.

§ 13. The said escheators shall be entitled to their usual fees and commissions out of the aforesaid sum or sums of money.

*Tb. Sec. 10.*  
Rights of  
creditors,  
&c., not  
prejudiced.

*Tb. Sec. 11.*  
Escheator's  
compensa-  
tion.

*Tb. Sec. 12.*  
Escheators  
failing to do  
their duty  
may be pros-  
ecuted.

Penalty for  
being concern-  
ed in the  
purchase of  
escheated  
property.

1833—(44)  
Sec. 1.  
Money re-  
covered by  
escheators  
to be paid  
into county  
treasury.  
*Tb. Sec. 2.*  
Their com-  
pensation.

## ESTATES OF DECEASED PERSONS.

§ 1. WHEN any person shall die, possessed of goods and chattels or personal estate, not bequeathed, the same shall descend to and be distributed among his or her heirs, in the same way and manner, that real estates not devised descend by this act: *Provided*, That the goods and chattels, or personal estate of any person deceased, whether testator or intestate, shall stand chargeable with the payment of all the just debts and funeral expenses of the deceased, and the charges of settling the said estate; and after the payment thereof, the surplusage, in case of intestacy, shall be decreed by the orphans' court, one-third thereof to the widow of the deceased person, unless the intestate died without children, or the descendants of them: in which case, she shall be decreed one-half thereof forever: and the lands, tenements, and hereditaments of the testator or intestate, shall stand chargeable with all the debts of the deceased, over and above

1806—(1)  
Sec. 27.  
Personal es-  
tate how dis-  
posed of &c.  
a Sec "De-  
scents," § 2.

Lands  
chargeable  
with the  
debts of the  
estate.



what the personal estate shall be sufficient to pay, as aforesaid: saying to the widow her dower in all cases, as is before provided.

1843—(25)  
Sec. 1.  
Estates of  
insolvents,  
how dis-  
tributed.

Priority of  
certain debts.  
Executor's or  
administrator's  
duties.

§ 2. When the estate, both real and personal, of any person deceased, shall be insolvent, or insufficient to pay all just debts which the deceased owed, the said estate, both real and personal, shall be distributed to and among all the creditors, in proportion to the sums to them, respectively, due and owing; saving that debts, due for the last sickness and necessary funeral expenses of the deceased, are to be first paid; and the executor or administrator of such estate shall file, in the office of the orphans' court by which he was appointed, an allegation in writing, setting forth that such estate is insolvent, and praying that the said estate may be declared insolvent; and shall, at the same time, make and attach to such allegation, as part thereof, three several schedules; one of which shall contain a full and true statement of all the goods and chattels, and choses in action, and other personal effects then belonging to the said estate, with the estimated value of each; another of which schedules shall contain a full statement of all the real estate, of which the decedent was possessed, or in or to which such decedent had any right, title, claim or interest, at the time of his death, with a statement of the local situation of the same, the nature of the decedent's title to or interest in the same, and the estimated value thereof; and the other of which schedules shall contain a statement of all the claims existing against the estate, the nature and amount of each claim, and the name and residence of each creditor of the estate: which allegation, and the schedules thereto attached, shall be verified by the written affidavit of the executor or administrator, that the same are true and correct, according to the best of his knowledge, information and belief. "And to the end, that the executor or administrator may have an opportunity to ascertain the situation of the estate of the testator or intestate, no suit or action shall be commenced against such executor or administrator, in such capacity, till after the expiration of six months from the time of proving the will of the testator, or of granting letters of administration on the estate of the deceased.

[a 1806—(1)  
Sec. 33.]  
Suits against  
executors,  
&c., sus-  
pended and  
prohibited,  
for 6 mo.

Ib. Sec. 2.  
Judge or  
clerk to ap-  
point a day  
for hearing  
the allega-  
tion.  
Clerk to give  
notice to  
creditors.

§ 3. Upon such allegation being filed, the judge, or, in his absence, the clerk of the said court, shall, by order, appoint a day, not less than thirty nor more than sixty days from the filing thereof, to hear and determine the same, and the clerk shall give notice, to the creditors of the estate, of the filing of such allegation, and the day appointed to hear and determine the same, by publishing such notice in some newspaper published in or nearest to the court-house, and by putting up at the court-house door a copy of such notice, for such time as may be ordered, and by issuing similar notices, to be served on such creditors as reside in the county, as other notices are served, and also by sending similar notices, by mail, to creditors residing out of the county: *Provided, nevertheless*, That the hearing and determining of such allegation, shall not be delayed, on account of such notices not having been served on any creditor.

Proviso.

Ib. Sec. 3.  
If any credit-  
or object to  
estate being  
declared in-  
solvent, an  
issue may be  
made up and  
tried.

Party cast to  
pay costs.

§ 4. If no opposition shall be made by any creditor, the said estate shall be declared insolvent, but any creditor or creditors may, by answer in writing, deny that said estate is insolvent, and, thereupon, an issue shall be made up, under the direction of the court, to try whether the estate is or is not insolvent, which issue shall, if either party shall desire it, be tried by a jury, at such time as the court may direct; and if such issue be decided against the executor or administrator, the allegation shall be dismissed, and he shall pay all the costs; and if the issue be decided against the creditor or creditors,



the estate shall be declared insolvent, and the costs shall be paid, either by the contesting creditor or creditors, or out of the funds of the estate, as the court in its discretion may direct: *Provided*, That whenever any such issue has been made up, any one or more creditors, though not joining in making up such issue, may, at any time before a trial thereof, on motion, be admitted to join in the same; but no more than one such issue shall be allowed to be made up by any creditor or creditors.

§ 5. Whenever any estate shall be so declared insolvent, the court shall, at the same time, make an order that the executor or administrator shall, on some day to be appointed in such order, not less than thirty nor more than sixty days therefrom, make a settlement of his accounts, and that notice be given to the creditors of the estate to attend the court on that day, which notice shall be given in the manner prescribed in the second section of this act.

§ 6. On the day appointed for the attendance of the creditors of the estate, such creditors shall hold a meeting in the presence and under the direction of the court, and may elect and nominate to the court, any suitable person being a resident citizen of this state, as administrator *de bonis non* of such estate; and upon such person taking the oath, and entering into bond with good security, in the manner now provided by law, the court shall grant to him letters of administration *de bonis non* on such estate; and making such election and nomination, each person shall, personally, or by his agent or attorney, be entitled to give a number of votes proportioned to the amount of his claim against the estate, according to the following scale of voting, that is to say: each creditor, having claims not exceeding one thousand dollars, shall be entitled to one vote for every hundred dollars of the amount of such claim; and each creditor, having claims exceeding one thousand dollars in amount, shall be entitled to ten votes for the first thousand dollars, and one additional vote for every five hundred dollars over and above the first thousand dollars; but every creditor, however small the amount of his claim, shall be entitled to at least one vote, and no creditor, however large the amount of his claims, shall be entitled to more than twenty votes; and in making such election and nomination, the person, having a plurality of votes given him, shall be elected and nominated.

§ 7. Any such meeting of creditors may, with the assent of the court, be continued or adjourned from time to time, until such election or nomination be made; and whenever a vacancy shall occur in the office of such administrator *de bonis non*, by his death, removal from the state, removal from office, or any other cause, before a final settlement of the estate, the court, on motion of any creditor of the estate, shall order another meeting of the creditors to fill such vacancy, in the manner hereinbefore directed.

§ 8. If none of the creditors of such estate shall attend at the time appointed, or if, from any other cause, no election, nomination and appointment of an administrator *de bonis non* of such estate be made, as herein provided, the judge of the court may, in his discretion, continue the former executor or administrator in office, or may appoint the general administrator of the county, or, if there be no such general administrator, the sheriff of the county, to be administrator *de bonis non* of such estate, and in either case the estate shall be managed thereafter as an insolvent estate, according to the provisions of this act.

*Proviso.*

*Ib. Sec. 4.*  
If estate is declared insolvent, court shall order ex'r or adm'r to appoint a day of settlement.

*Ib. Sec. 5.*  
Administrator *de bonis non* may be appointed.

To take oath and give bond.

How elected and nominated to the court.

*Ib. Sec. 6.*  
Meeting of creditors to be adjourned from time to time, till election. Vacancy in office of adm'r, how filled.

*Ib. Sec. 7.*  
If no election &c. be made, judge to appoint.

When the sheriff shall be adm'r.



*Ib. Sec. 8.*  
Duty of court  
on appoint-  
ment of  
adm'r, and  
his duty.

§ 9. Whenever any administrator *de bonis non* shall be appointed, according to the provisions of this act, any former grant of letters testamentary or of administration of the said estate shall be thereby revoked; and all the goods, chattels, moneys, choses in action, and other personal effects, belonging to the said estate, shall be thereby vested in such administrator *de bonis non*; and he shall be entitled to demand and receive from the former executor or administrator, all moneys found due and owing from him to the estate, and all such goods, chattels, choses in action, and other personal effects, and deeds and other evidences of title to real estate, and may recover the same by any proper proceedings or actions either in the orphans' court, or any court of common law or equity, against such former executor or administrator and his securities.

*Ib. Sec. 9.*  
Claims *vs.*  
insolvent es-  
tate to be  
filed in  
clerk's office,  
verified by  
affidavit.  
Clerk's du-  
ties.

§ 10. Every person, having any claim against such insolvent estate, shall file the same in the clerk's office of the said court, within six months after such estate is declared insolvent; and every such claim shall be verified by the affidavit of the claimant; and the clerk shall give a receipt therefor to the claimant, his agent or attorney, and shall endorse on such claim the day on which the same was filed; and shall keep a docket or list of all such claims, which shall, at all times, be subject to the inspection of the administrator and creditors of the estate; and if no opposition shall be made to the allowance of such claim, in the manner hereinafter provided, within nine months after the time when the said estate was declared insolvent, such claim shall be admitted and allowed, as a good and valid claim against the said estate, without further proof.

*Ib. Sec. 10.*  
Within nine  
months after  
estate is de-  
clared insol-  
vent, the ad-  
ministrator  
or any cred-  
itor may ob-  
ject to any  
claim filed  
*vs.* the estate.  
An issue  
may be made  
up and tried,  
and the par-  
ty cast shall  
pay costs.

§ 11. At any time within nine months after such estate shall be declared insolvent, the administrator or any creditor or creditors of the said estate, in the name of the administrator, may object to the allowance of any claim filed against the estate, by filing in the clerk's office such objection in writing; and, thereupon, the court shall cause an issue to be made up, between such claimant, as plaintiff, and the administrator, or the contesting creditor, in the name of the administrator, as defendant, by pleading thereon, in the same manner as if the claimant had sued the administrator thereon at common law; and such issue shall be tried as at common law; and if the issue be found against the claimant, his claim shall be adjudged to be rejected, and he shall pay all costs of such issue and trial; and if such issue be found for the claimant, for the whole amount of his claim, the same shall be adjudged to be allowed; and he shall recover all his costs, to be paid by the contesting creditor, or out of the funds of the estate, as the court may direct; and if a part only of such claim be found due to such claimant, his claim shall be adjudged to be allowed to the amount so found due, and in that case the court may, in its discretion, direct the costs to be paid by either party, or what portion of the costs shall be paid by each.

When costs  
shall be paid  
by either  
party, or by  
both.

*Ib. Sec. 11.*  
Every ex'r.  
or adm'r. of  
insolvent es-  
tate to make  
settlement as  
such.

Court to de-  
cree to each  
creditor a  
ratable por-  
tion of  
moneys due.

§ 12. Every executor or administrator, of an insolvent estate, shall make a settlement of his accounts as such, at such time (not less than nine nor more than twelve months from the time such estate shall be declared insolvent,) as the court may appoint; and at such settlement, the court shall adjudge and decree to each creditor, whose claim shall have been allowed as herein provided, his ratable portion of all moneys then found due from said executor or administrator, reserving, nevertheless, in the hands of such executor or administrator, a ratable portion of such moneys for such claims as may be then contested and undivided; and a similar settlement and ratable distribution shall be made at least every six months thereafter,



at such times as the court may appoint, until the estate shall be finally settled and distributed.

§ 13. No suit now pending, or which may hereafter be brought or revived, against any executor or administrator, shall be abated, on any plea or suggestion, that such estate has been reported or declared insolvent, since the commencement of such suit; but after such estate shall have been declared insolvent, in the manner herein provided, that fact may be specially pleaded by the executor or administrator, without thereby waiving or abandoning any plea by him previously pleaded; and the suit shall be tried on all the issues that may be joined in the case; and if the issues, joined in all the other pleas, except the special plea of insolvency, be found for the plaintiff, and the issue joined in that special plea shall be found for the defendant, the court shall render judgment, that the plaintiff is entitled to the sum of money found due him, but that it appears that the estate has been duly declared insolvent, no execution shall be issued therefor, and that the judgment shall be certified to the proper orphans' court; and upon a duly certified transcript of such judgment being filed as a claim against the estate, as herein provided, the plaintiff shall be allowed, as a creditor of the estate, his ratable portion on the amount of such judgment, and the costs of such suit.

*Ib. Sec. 12.*  
No suit *vs.* executor or adm'r. to abate on plea that estate has been declared insolvent, since commencement of suit

§ 14. On the trial of any issue directed to be made up and tried under this act, if either party shall be dissatisfied with any decision or charge of the judge trying the same, such party may except to such decision or charge, and tender his bill of exceptions, as in trials of suits at common law, and may within twelve months thereafter appeal from, or sue out a writ of error to such judgment, as in suits at common law.

*Ib. Sec. 13.*  
On suits tried under this act, parties may appeal.

§ 15. After any estate shall have been declared insolvent, it shall not be necessary that claims against such estate shall be presented to the executor or administrator, but they may be filed with the clerk, without any such presentment: *Provided*, Such claims are not already barred by the statute of non-claims.

*Ib. Sec. 14.*  
Claims *vs.* estate may be filed, without presentment to ex'r. or adm'r. if not barred.

§ 16. Any creditor, whose debt is not due, may exhibit it to the executor or executors, administrator or administrators, as if it were due, and thereupon shall be considered as a creditor under this act; and shall receive a dividend of the said testator's or intestate's estate; deducting a rebate of legal interest, for what he shall receive on such debt, to be computed from the actual payment thereof, to the time such debt would have become due.

1806—(1)  
*Sec. 34.*  
Debts not due may be exhibited.

§ 17. All claims against the estates of deceased persons shall be presented to the executor or administrator, within eighteen months after the same shall have accrued, or within eighteen months after the passing of this act, or within eighteen months after letters testamentary or letters of administration shall have been granted to said executor or administrator, and not after; and all claims, not presented within the time aforesaid, shall be for ever barred from a recovery: *Provided*, That the provisions of this section shall not extend to persons under age, *femes covert*, persons insane, or *non compos mentis*, to debts contracted out of this state, nor to claims of heirs or legatees claiming as such.

1815—(6)  
*Sec. 2.*  
Claims against estate to be presented within 18 months, or barred.

§ 18. Whenever it shall be made to appear to the satisfaction of any orphans' court, that the estate of any deceased person, or those who are entitled to inherit the same, will be less injured, by a sale of the land, or part thereof, for the payment of debts, than by a sale of slaves, such court may, on the petition of any party interested, cause a citation to issue to all other interested persons, if in the county, or

*Proviso.*

1818—(14)  
*Sec. 2.*  
Discretionary with orphans' court to order sale of land or slaves.



when that is not the case, by publication of notice in some paper, for such interested party or parties to appear at the next county court, and show cause, if any they can, why sale of the land, belonging to the estate so situated, should not be ordered; and on the return of such citation made known, or proof of the publication of the notice hereby required, at the next term of such orphans' court, if no cause be shown, which the court deem sufficient, such court may order sale of such land, or whatever parts thereof, as may be necessary to satisfy debts, without a sale of negroes; and such sale shall vest in the purchaser the same title, in law or equity, of which such decedent died possessed.

1826—(15)

Sec. 4.

Slaves to remain on the premises until the last day of December.

§ 19. If any person shall die after the first day of January, the servants and slaves, of which he was possessed, whether held for life or other interest, and which were employed in making a crop, shall be continued on the plantation in the occupation of the decedent at the time of his death, until the last day of December following, and then delivered to those who shall have a right to demand the same; and their crops shall be assets in the hands of the executors and administrators, subject to debts, legacies and distribution; the levies and taxes, their tools, the expense of feeding them and their families to that time, and delivering them well clothed, being first deducted.

1826—(35)

Sec. 2.

Provisions laid in by the deceased not to be sold.

When they may be divided.

§ 20. The dead victuals and liquors, which at the death of any testator or intestate, shall have been laid in for consumption in his family, shall not be sold by the executor or administrator, but shall remain for the use of such family, without account thereof being made. If, however, before their final consumption, any child shall leave the family, such child shall have a right to carry with him or her an equal share of what shall then be on hand. Any live stock which may be necessary for the food of the family, may be also killed for that use, at any time before the sale, division or distribution of the estate.

1827—(26)

Sec. 1.

Exr. &c. not to sell property exempt from execution.

1830—(20)

Sec. 1.

Division of estates when clear of debt.

§ 21. All such property, as now is, or hereafter may be, exempt from execution, is hereby exempt from sale by an executor or administrator, and the family shall be suffered to retain the same.

§ 22. Whenever any person or persons die intestate, and leaving an estate not involved in debt so as to enforce a sale of any part of his or her estate, real or personal, it shall be the duty of the judge of the county court, within three months after such estate is represented by the administrator or administratrix to be solvent, to appoint five commissioners, who, or a majority of them, shall, within six months after their appointment, being first duly sworn, make division and distribution of such estate, (reserving to the widow her dower in all cases,) among the legatees or other legal representatives of the deceased; and such division and distribution shall be reduced to writing, and signed by said commissioners, and certified by the justices of the peace, or other magistrate, before whom said commissioners are sworn, and returned to the office of the clerk of the county court, or such other office as may be prescribed by law for that purpose, whose duty it shall be to record the same, as now required by law in cases of inventories: *Provided, always,* That when such division and distribution cannot be equitably effected, without manifest injury to the legatees, or other legal representatives, in that case, such estate shall be exposed to public sale as heretofore.

1812—(11)

Sec. 1.

[a 1833—(18)]

Sec. 1.]

Orphans' court may

§ 23. Any person entitled to the distribution of an intestate's estate, may, at any time after the expiration of eighteen months from granting the letters of administration, petition the orphans' court, setting forth his claim, whereupon it shall be the duty of the said court



to grant a rule on the administrator, administratrix, or administrators, (as the case may be,) to make the distribution agreeably to law; but no administrator, administratrix or administrators, shall be compelled to make distribution at any time, until bond and security be given by the person entitled to distribution, to refund a due proportion of any debts or demands, which may afterwards appear against the intestate, and the costs attendant on the recovery of such debt.

§ 24. Any person, entitled to a legacy, or any estate by will, shall be entitled to the provisions of the foregoing section, as in case of administrators: *Provided*, That nothing, herein contained, shall be so construed, as to compel any distributee to give bond and security as aforesaid, for his or her distribution of the estate of any intestate, after a final settlement shall have been made by the administrator or administratrix.

§ 25. When any of the children of a person dying intestate shall have received from such intestate, in his or her lifetime, any real or personal estate by way of advancement, and shall choose to come into the partition of the estate, with the other parceners, such advancement, both of real and personal estate, or the value thereof, shall be brought into hotch-pot with the whole estate, real and personal, descended; and such party, bringing into hotch-pot such advancement as aforesaid, shall thereupon be entitled to his, her, or their portion of the whole estate so descended, both real and personal.

§ 26. When one or more of the heirs of any deceased intestate shall have received property of the ancestor in his lifetime, and shall wish to bring the same into hotch-pot, and the parties cannot agree as to the value of such property, the same shall be ascertained by testimony, and affixed by the judge of the county court of the county, where letters testamentary or of administration shall have been granted; and it shall be his duty to do so, on the application of any person concerned in interest, on due notice to the other persons interested; and the said judge may, at his discretion, impanel a jury to assess the value of the property in question; and on the application of either party for a jury, it shall be the duty of the judge to cause the same to be impaneled; and in all cases, the value of the property, at the time it was delivered, shall be fixed by said judge or jury, as the case may be; and the value so fixed, or the value agreed upon by the parties, shall be deducted from the share of such heir or heirs.

§ 27. Whenever an executor of any deceased testator, or administrator of any deceased intestate, shall fail to apply to the orphans' court, for the sale of real estate, for the purpose of paying the debts due thereby, the judgment creditor may,—upon filing a suggestion in the clerk's office, in which judgment shall have been rendered, that real estate has descended to the heirs, and that sale of the same, or some part thereof, is necessary for the satisfaction of said judgment, and that said executor or administrator has failed or refused to make application for the sale thereof, and setting out the names of said personal representative and heirs,—sue out a *scire facias* against said executor or administrator and heirs, returnable to the next term of said court, requiring them, then and there, to show cause, why said plaintiff should not have execution against said real estate, and if sufficient cause to the contrary be not shown, exe-

order distribution in 18 months after administration granted.

Distributee to give bond and security.

*Ib. Sec. 2.*  
No bond required after final settlement.

1822—(7)  
*Sec. 1.*  
Estate previously received may be brought into hotch-pot.

1823—(1)  
*Sec. 2.*  
Property brought into hotch-pot, how valued.

Its value to be deducted from heir's portion.

*Ib. Sec. 1.*

Judgment creditors may subject lands to sale by *sci. fa.*



Penalty on ex'rs and adm'rs for not applying for leave to sell lands.

cution shall be awarded against said real estate: (1) and all executors and administrators, who fail to apply for leave to sell real estate three months after reporting the estate insolvent, shall be deemed guilty of a *devastavit*, and may be sued on their bond, together with their securities. (2)

*Ib. Sec. 3.*  
Ex'r or adm'r to pay interest on funds of the estate applied to his own use.

§ 28. When any executor or administrator shall apply any of the funds of the estate of his testator or intestate to his own private use, or shall have heretofore done so, he shall pay interest for the same; and in making their returns to the court, they shall state the sum so used, and the time at which it was applied, or shall expressly deny on oath, that they have so used any of the funds of their testator or intestate; and if any person, interested in such estate, shall controvert the statement so made, the same shall be determined by the judge of the county court, on evidence to be adduced; and if the judge deem it necessary, he may, and if either party request it, he shall, impanel a jury to decide on such disputed facts.

*Ib. Sec. 4.*  
Publication when heirs are non-residents. 1835—(12)

§ 29. When the heirs may reside without the limits of this state, the court shall direct publication to be made, as in the case of non-resident defendants in chancery.

*Sec. 1.*  
How long personal estate may be kept together

§ 30. It shall be lawful for the judges of the several county courts in this state, to authorize and permit the executor or administrator of any estate, on application made and good cause shown, to keep the personal estate of the decedent together, and exempt from sale for any length of time that they may deem advisable, not exceeding ten years.

*Ib. Sec. 2.*  
Ex'r or adm'r to make annual return.

§ 31. Such administrator or executor shall make an annual return to the judge of the county court of the county in which letters testamentary or letters of administration have been granted, of the manner in which such estate has been managed, the crops made, the expenses incurred, and the dispositions of all moneys received from the estate; and on failure to do so, it shall be the duty of the judge of said county court, forthwith to issue an attachment against such executor or administrator, and compel him to make such return.

*Ib. Sec. 3.*  
To keep regular account.

§ 32. Such executor or administrator shall keep a regular account of all moneys appropriated or expended, for each, and every person entitled to distribution of the estate, and make an annual return of the same to the judge of the county court.

*Ib. Sec. 4.*  
Judge to take bond of ex'r or adm'r.

§ 33. The judges of the county court are hereby directed and required to take from such executor or administrator, as aforesaid, bond, with sufficient security, for the faithful performance of the above enumerated duties.

*Ib. Sec. 5.*  
This act not to defeat last will.

§ 34. This act shall not be so construed, as to conflict with or defeat the provisions of the last will and testament of any testator.

*Ib. Sec. 6.*  
Not to affect creditors' rights nor delay l. gatee. &c.

§ 35. This act shall not in any manner defeat or affect the rights of creditors, or be so construed, as to prevent any legatee, or distributee of any estate, entitled to distribution thereof, whensoever they respectively arrive at full age, from drawing his or her proportionable share of such estate.

(1) On judgment against an administrator, lands descended cannot, by *sci. fa.* against the heirs, be made liable to execution. *Bells et al. v. Heirs of Robinson*, 1 *Stewt. Rep.* 193.

(2) A decree of the county court, ordering the sale of the lands of an insolvent estate, is evidence against third persons, concerning the lands sold. Such decree cannot be inquired into or impeached, while unreversed:—and is evidence, although the whole of the proceedings on the intestate's estate be not shown. *Richardson v. Hobart*, 1 *Stewt. Rep.* 500.



§ 36. It shall be lawful for administrators and executors to rent, at public outcry, the real estate of any decedent, until a final settlement of the said decedent is effected; and the proceeds shall be assets in the hands of such executors or administrators.

§ 37. In all cases when administrators, &c. shall be authorized, by the decision of the judge of the county court, to hold personal estate together, for the space of ten years, on good cause shown, they shall, in like manner, be authorized to retain in their possession the real estate of the deceased, and the same to cultivate for a like space of time, reserving, in all cases, to the widow, her dower.

1839—(18)  
Sec. 1.  
Adm'rs or  
ex'rs may  
rent real es-  
tate, &c.  
1b, Sec. 2.  
When au-  
thorized to  
retain per-  
sonal estate  
10 years, may  
also retain  
real estate.

## EXECUTIONS.

The legislative enactments, on the subject of executions, naturally divide themselves into the following heads, viz :

1. Issuance of, and proceedings under executions, generally.
2. *Supersedas* of executions.
3. Priority and lien of executions.
4. Property exempt from execution.
5. Right of property executed.
6. Delivery bonds.
7. Sales under execution.
8. Proceedings against officers holding executions.

1. ISSUANCE OF, AND PROCEEDINGS UNDER EXECUTIONS, GENERALLY.<sup>1</sup>

§ 1. All persons, who shall recover any debt, damages, or costs, by the judgment of any court of record within this state, may, at their election, prosecute writs of *fieri facias*, *elegit*, and *capias ad satisfaciendum*, within the year, for taking the goods, lands, or body, of the person or persons against whom such judgment is obtained, in manner following: all such writs shall run in the name of "the State of Alabama, and bear teste by the clerks of the said courts, respectively; shall be returnable to the first day of the next succeeding court;<sup>2</sup> so that there be always at least fifteen days between the teste and return of each of the said writs: *Provided*, That if the plaintiff shall desire an execution to issue returnable at a further day, the clerk shall issue the same accordingly, so as the day of such return be upon a court-day, within ninety days next after the teste thereof. The forms of the said several writs shall be as follows, *mutatis mutandis*:

"<sup>b</sup> The State of Alabama, to any Sheriff of the State of Alabama: Greeting: We command you, that of the goods and chattels<sup>3</sup> of A. B., late of your county, you cause to be made the sum of which C. D. lately in our court hath recovered against him

1867—(21)  
How execu-  
tions may is-  
sue on judg-  
ments.

[a Con. Ala.  
Art. 5, Sec.  
17.]

[b Con. Ala.  
Art. 5, Sec.  
17.]  
Form of a  
*fieri facias*,  
in debt.

<sup>1</sup> The law in relation to executions, issued by justices of the peace, is introduced at the conclusion of this division, except such parts of it as fell incidentally and more properly under the other divisions.

<sup>2</sup> They are required to be returned three days previously to the term of the court. See "Judicial Proceedings at Common Law,—Process."

<sup>3</sup> Lands, tenements, and hereditaments, are, by act of December 23, 1812, made subject to the payment of all judgments, or decrees of any court of record in this state, and the clerks are required to frame the execution accordingly.—See § 17.



for debt ; also the sum of \_\_\_\_\_, which to the said C. D. in the same court were adjudged for his damages ; as well by reason of the detention of the said debt, as for his costs in that behalf expended ; whereof the said A. B. is convicted, as appears to us of record ; and that you have the said \_\_\_\_\_ before the judge of our said court, on the \_\_\_\_\_ day of \_\_\_\_\_ next, to render to the said C. D. of his debt and damages aforesaid ; and have then and there this writ.

Witness," &c.

The same in case upon a promise—

In *assump-*  
*sit.*

As before, unto \_\_\_\_\_ "for his damages which he hath sustained, as well by reason of the non-performance of a certain promise and assumption, by the said A. B. to the said C. D. lately made, as for his costs by him about his suit in that behalf expended," &c.

In *trespass.*

As before, unto \_\_\_\_\_ "for damages as well by occasion of a certain trespass by the said A. B. to the said C. D. offered, as for his costs," &c.

If for the defendant, say,—

In *covenant.*

"For his costs about his defence in a certain action at the suit of the said," &c. As before unto \_\_\_\_\_ "for damages, &c. by reason of a breach of a certain covenant between the said A. B. and C. D. lately made," &c.

[a Con. Ala.  
Art. 5, Sec.  
17.]  
Form of a  
*writ of elegit*

"The State of Alabama," to any Sheriff of the State of Alabama: Greeting: Whereas A. B. at our \_\_\_\_\_ court, &c. before our judge held, hath recovered against C. D. the sum of \_\_\_\_\_, which to the said plaintiff was adjudged, for a certain debt or damages, (as, before) and the said A. B. hath chosen to have delivered to him all the goods and chattels of the said C. D., saving only the oxen and beasts of his plough, and also a moiety of all his lands and tenements in your county, to have and to hold the goods and chattels aforesaid, as his own proper goods, and the said moiety as his freehold, to him and his assigns, until he shall have levied thereof, the debt and damages aforesaid ; therefore we command you, that you cause to be delivered all the goods and chattels of the said C. D., saving the oxen and beasts of his plough, and also a moiety of all his lands and tenements in your county, whereof he, at the day of obtaining the said judgment, was seized, or at any time afterward, by reasonable price and extent, to have and to hold the said goods and chattels, to him and the said A. B. as his own proper goods and chattels, and the said moiety as his freehold, to him and his assigns, until he shall have levied thereof, the debt and damages aforesaid ; and that you certify to our said judge, under your own seal, and the seals of those by whose oath you shall make this extent and appraisement, how you execute this writ ; the \_\_\_\_\_ day of \_\_\_\_\_ ; and have then and there this writ."

[b Con. Ala.  
Art. 5, Sec.  
17.]  
Form of a  
*capias ad  
satisfaciendum.*

"The State of Alabama," to any Sheriff of the State of Alabama: Greeting: We command you, that you take A. B., late of your said county, if he be found therein, and him safely keep, so that you have his body before the judge of our \_\_\_\_\_ court, &c. the \_\_\_\_\_ day of \_\_\_\_\_ next, to satisfy C. D. the sum of \_\_\_\_\_, which the said C. D. hath recovered against him for debt, also," &c. as before in case, trespass, or covenant, as in the *feri facias*.

Which said writs, so issued, shall be executed by the sheriff or other officer, to whom the same shall be directed, and shall be returned according to the respective forms hereafter mentioned.

Form of the  
several re-

"By virtue of this writ, to me directed, I have caused to be made



the within mentioned sum of \_\_\_\_\_, of the goods and chattels<sup>1</sup> of the within named A. B., which said sum of \_\_\_\_\_, before the judge within mentioned, at the day and place within contained, I have ready, as that writ requires.” Or:—“The within named A. B. hath no goods or chattels within my county, whereof I can make the sum of \_\_\_\_\_, within mentioned, or any part thereof.” Or:—“By virtue,” &c. “I have caused to be made of the goods and chattels of the within named C. D., the sum of \_\_\_\_\_, in part of the debt and damages within mentioned, and I do further certify that the said A. B. hath no more goods and chattels within my county, whereof at present I can make the residue of the said debt and damages, as by the said writ is required.”

“Inquisition indented, taken at \_\_\_\_\_, in the county aforesaid, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, \_\_\_\_\_, before me, E. F., sheriff in the county aforesaid, by virtue of a writ to me directed, and to this inquisition annexed, and by the oaths of A. B. C. &c., good and lawful men of said county, who being charged and sworn, upon their oath do say, that A. B. in the said writ, to this inquisition annexed named, the day of the caption of this inquisition, was possessed of the goods and chattels following, as of his own proper goods, to wit: \_\_\_\_\_, of the price of \_\_\_\_\_, which I, the said sheriff, have caused to be delivered to the said C. D., to hold to him as his own proper goods and chattels, in part of satisfaction of his debt and damages aforesaid, in the said writ mentioned: *And further*, The said jurors upon their oath do say, that the said A. B. at the time of rendering the judgment aforesaid, was seized in his own demesne, of fee, of and in (here name the houses and lands) with the appurtenances, of the annual value, in all the issues beyond reprises, of \_\_\_\_\_ dollars; \_\_\_\_\_ acres of which, or thereabouts, are a true and equal moiety of all and singular the lands, tenements, and hereditaments whatsoever, in the county aforesaid, of the said A. B., which said moiety, I, the said sheriff, the day aforesaid, to C. D. in the said writ named, at a reasonable extent, have delivered, to hold to him and his assigns, as his freehold, according to the form of the act in that case made and provided, until he shall have levied the residue of the debt and damages aforesaid, as the writ aforesaid requires: *And further*, The said jurors, upon their oath do say, that the said A. B. at the time of giving the judgment aforesaid, had not, nor at the day of taking this inquisition hath, any other or more goods and chattels, lands or tenements, in the county aforesaid, to the knowledge of the jurors aforesaid; in testimony whereof, as well I, the said sheriff, as the jurors aforesaid, to this inquisition have severally put our seals, the day, year, and place above mentioned.”

“By virtue of this writ to me directed, I have taken the within named A. B., whose body before the judge within named, at the day and place within contained, I have, ready to satisfy C. D., of the debt and damages within mentioned.” Or:—“The within named A. B., is not found within my county.”

§ 2. When any execution shall issue, and the party, at whose suit the same is issued, shall afterward desire to take out another writ of execution, at his own proper cost and charges, the clerk may issue the same, if the first writ be not returned and executed; and where, upon a *capias ad satisfaciendum*, the sheriff shall return that the defendant is not found, the clerk may issue a *fieri facias*; and if upon

<sup>1</sup> See the preceding note.



a *feri facias* he shall return that the party hath no goods, or that only part of the debt is levied, in such case it shall be lawful to issue a *capias ad satisfaciendum* upon the same judgment; and where part of a debt shall be levied upon an *elegit*, a new *elegit* shall issue for the residue; and where *nihil* shall be returned upon any writ of *elegit*, a *capias ad satisfaciendum*, or *feri facias* may issue, and so *vice versa*; and where one judgment is obtained against several defendants, execution thereon shall issue, as if it were against one defendant, and not otherwise.

Remedy of the tenant by *elegit*, in case of eviction.

§ 3. If any tenant by *elegit*, be evicted of his title in the lands, tenements, or hereditaments, which he holds by virtue of any extent thereof, by judgment had against him otherwise than by his own fraud or default, before satisfaction shall be made him for his debt, or damages and costs, he may have a writ of *scire facias* against the debtor, his heirs, executors, or administrators, and may thereafter sue out such other writ of execution for the residue of his debt, or damages and costs, as shall appear to remain unpaid, as if no execution had been theretofore issued.

Where lands have been omitted out of the extent, judgments, &c. not to be void.

§ 4. When any judgment or recognizance shall be extended, the same shall not be avoided or delayed, by occasion that any part of the lands or tenements extendible, are or shall be omitted out of such extent, saving always to the party and parties whose lands shall be extended, his and their heirs, executors, and assigns, his and their remedy for contribution against such person and persons, whose lands are or shall be omitted out of such extent, from time to time: *Provided, nevertheless*, That this act, or anything therein contained, shall not be construed to give any extent or contribution against any heir or devisee, within the age of twenty-one years, during such minority of such heir or devisee, for or in respect of any lands to such heir or devisee descended or devised, further or otherwise than might have been made before the making of this act.

Proviso as to infant heirs and devisees.

Proceedings in case of the death of the party in execution.

§ 5. If any person being in prison, charged in execution, shall happen to die in execution, the party or parties, at whose suit, or to whom such person shall stand charged in execution for any debt or damages recorded, his or their executors or administrators, may, after the death of the person so dying in execution, lawfully sue forth and have new execution against the lands and tenements, goods and chattels, or any of them, of the person so deceased: *Provided, always*, That this act shall not extend to give liberty to any person or persons, their executors or administrators, at whose suit any such party shall be and die in execution, to have or take any new execution against any of the lands, tenements or hereditaments of such party dying in execution, which shall, at any time after the said judgment or judgments, be by him sold *bona fide* for the payment of any of his creditors at whose suit he shall be in execution, and the money paid, or secured to be paid to any such creditors, with their privy, in discharge of his or their debts, or some part thereof.

Discharge by privilege.

§ 6. If any person, taken in execution, be delivered by privilege of either house of assembly, so soon as such privilege ceaseth, he shall return himself a prisoner in execution, or be liable to an escape.

*Ib. Sec. 12.* Slaves not to be taken, if other property be shown, unless execution amounts to 100 dollars.

§ 7. No sheriff or other officer, to whom any writ of *feri facias* shall be directed, shall take in execution any slave or slaves, unless the debt and costs mentioned in such *feri facias*, shall amount to the sum of one hundred dollars: *Provided*, There be shown to such sheriff or officer, by the defendant or any other person, sufficient other goods and chattels, of such defendant's, within the county of such



sheriff or officer, upon which he may levy the debt and costs mentioned in such *feri facias*.

§ 8. Where any slave or slaves shall be taken in execution, and sold, the names of such slaves shall be certified on the back of the execution, and returned to, and recorded among the records of the court where such execution shall issue. *Ib. Sec. 13.*  
Names of slaves sold to be certified on execution.

§ 9. If the goods, taken by any sheriff, or other officer, or any part thereof, shall remain in his hands unsold, he shall make return accordingly; and, thereupon, the clerk of the court, from whence the execution issued, may, and shall, if required, issue a *venditioni exponas*, to such sheriff or other officer directed, whereupon the like proceedings shall be had, as might and ought to have been had on the first execution; which writ of *venditioni exponas* shall be in the following form: *Ib. Sec. 14.*  
If goods remain unsold, a *venditioni exponas* may issue.

“The State of Alabama,<sup>a</sup> &c. Greeting: We command you that you expose to sale those goods and chattels of A. B. to the value of \_\_\_\_\_, which according to our command, you have taken, and which remain in your hands unsold, as you have certified to our judge of our \_\_\_\_\_ court, to satisfy C. D., the sum of \_\_\_\_\_, whereof in our said court he hath recovered execution against the said A. B., by virtue of a judgment in the said court, and that you have,” &c. [aCon. Ala. Art. 5, Sec. 17.]  
Form.

§ 10. When any sheriff or other officer shall serve any writ of execution on slaves, horses, or other live stock, and the same shall not be immediately restored to the debtor, on his executing a forthcoming bond,<sup>1</sup> it shall be lawful for such officers, and they are hereby required, to provide sufficient sustenance for the support of such slaves or live stock, until such slaves or stock be sold, or otherwise legally discharged from such execution: and upon the return of any execution, the court shall, upon motion of the officer serving the same, settle and adjust what such officer shall be allowed for his expenses, incurred by supporting such slaves or stock; and the said officer shall be allowed to retain the same, out of the money arising from the sale of the said slaves or stock. *Ib. Sec. 15.*  
Sheriff to provide for slaves, &c., taken in execution.  
Court to allow necessary expenses.

§ 11. When any writ of *capias ad satisfaciendum* shall be levied on any debtor, it shall be lawful for such debtor to tender, to the sheriff or other officer serving the same, slaves or personal property to the value of the debt and costs, for which such execution may be issued; which property the said sheriff or other officer shall receive, and proceed to sell, in like manner as is herein directed, in the case of goods taken in execution upon a writ of *feri facias*, and shall thereupon discharge such debtor out of custody: *Provided, always*, That if such property, so tendered, shall not be sufficient to satisfy the debt or damages, and costs, or shall be under any lien or incumbrance, so that the whole cannot be sold, a new *capias ad satisfaciendum*, or *feri facias*, at the option of the plaintiff, shall issue for any balance: and the clerk of the court, from which such execution originally issued, shall, upon the return of the sheriff, of the insufficiency or incumbrance aforesaid, issue a new *capias ad satisfaciendum* or *feri facias*, if required: but where such property shall have been under any incumbrance, the debtor shall not be at liberty to tender slaves or personal estate, on a second *capias ad satisfaciendum* being served, or in case of a *feri facias* issued in consequence of such return, to avail himself of the privileges of this act. *Ib. Sec. 18.*  
Debtor may release his body by delivering property.  
If the property be insufficient, or incumbered, new execution to issue.  
Restriction.

<sup>1</sup> See the 6th division of this title.



*Ib. Sec. 20.*  
When amt't  
of sales ex-  
ceeds debt  
and costs, re-  
sidue to go  
to debtor.

Penalty, &c.

*Ib. Sec. 21.*  
Where an  
injunction is  
obtained, the  
money to re-  
vert to debtor

*Ib. Sec. 34.*  
Proceedings  
after a final  
decree in  
chancery.

[a Con. Ala.  
Art. 5, Sec.  
17.]

*Ib. Sec. 33.*  
On *elegit*, de-  
fendant may  
elect lands to  
be taken.  
1807—(22)  
Preamble.

§ 12. Whosoever, on a sale made under any execution, the amount of such sale shall exceed the principal, interest, and costs, the sheriff or other officer, shall pay such excess or surplus to the debtor, his executors, administrators, or agent; and if any sheriff or other officer shall fail or refuse to pay such surplus or excess, when required, such sheriff or other officer, his or their security or securities, his or their executors or administrators, shall, each and every of them, be liable to the like penalty and judgment in favor of the said debtor, as is prescribed and directed by law, in favor of the plaintiff against the sheriff, for not paying the principal, interest and costs, levied on an execution.

§ 13. When any sheriff or other officer, under any execution, shall receive the whole or any part of the money for which the said execution was issued, and the person against whom such execution may have issued, his executors or administrators, shall obtain an injunction to such execution, or any part of the money mentioned therein, before the money, received by such sheriff or other officer, is paid to the plaintiff, his agent or attorney, or his executors or administrators; in every such case, the sheriff or other officer, his executors or administrators; shall repay the person or persons against whom such execution issued, his or their executors, administrators, or agent, the money so received, or such part thereof as may be enjoined to the person having a right to demand the same; such sheriff or other officer, and their securities, his and their executors or administrators, and every of them, shall be liable to the like penalty and judgment, in favor of the person, his executors or administrators, by whom the said injunction is obtained, as is directed by law in favor of the plaintiff, against the sheriff, for not paying money levied on an execution.

§ 14. After obtaining a final decree for lands, slaves or money, or things of a specific nature, in any court having chancery jurisdiction, the clerk of such court shall, upon the request of the party obtaining such decree, issue any writ of execution, either a *feri facias*, *capias ad satisfaciendum*, *habere facias possessionem*, or any judicial process, which may now issue from any court of common law, according to the nature of the case, for carrying the said decree into effect; which writ shall issue in the name of the State of Alabama,<sup>a</sup> and bear teste, and be signed by the clerk of the court; and all process so issued shall be executed and returned to the clerk's office from which the same issued, from term to term, on the return day thereof, by the officer or officers to whom the same shall be directed, and shall have the same operation, and possess the same force, to all intents and purposes, as similar process issued upon judgments at common law: the officer or officers, to whom any such process is directed, shall be subject to the like penalties for misconduct or neglect, and the court shall exercise, in this and in all cases relating to such process, the same powers, as if the said process had issued upon a judgment obtained at common law: but nothing, herein contained, shall prohibit any person from proceeding to carry any order or decree in chancery into execution, in any manner of which he might have availed himself, before the passing of this act.

§ 15. In all cases where the writ of *elegit* shall be sued out, the defendant or defendants shall have the election of the moiety of his, her, or their lands to be extended.

*Whereas*, divers persons residing in other states, governments, or dominions, possessed of lands, tenements, and hereditaments, in this



state, may have contracted, or may contract debts with the inhabitants of this state, without having personal estate in the same, to satisfy such debts and damages:

§ 16. *Be it therefore enacted, &c.* That all process, which heretofore issued against goods and chattels, shall hereafter issue against lands and tenements, in the same manner as against goods and chattels in the case of foreigners and non-residents; and the sheriff, upon such attachment, execution or other process, shall proceed to levy the same upon the goods and chattels of the defendant, in the first instance, if any there be; but if, to the best of his knowledge, there be no such goods and chattels, or not sufficient to answer the plaintiff's demand, he shall execute the same upon the lands and tenements of such non-resident, to the amount of the whole debt; or of so much as may remain more than the value of the goods and chattels so found; and such lands and tenements shall be liable, under the restrictions aforesaid, to be sold to satisfy the judgment of the plaintiff; and he shall sell the same, at the most public place in his county, after his having given at least forty days' notice, by advertisement in the public gazettes, before the day of sale.

Sec. 1.  
In what  
manner  
lands of non-  
residents are  
subject to  
execution.

§ 17. Hereafter, lands, tenements, and hereditaments shall be subject to the payment of all judgments or decrees of any court of record within this state, and the clerk of such court shall frame the execution accordingly; and in all cases, the sheriff or other officer, levying such execution on real estate, shall give at least thirty days' notice of the time of such sale; and the sale shall be at the courthouse of the county in which such land may lie: *Provided*, The courts holden by justices of the peace, shall not be deemed courts of record, within the meaning and provisions of this act; and the sheriff or other officer selling any real estate, shall make a title to the purchaser, which title shall vest in the purchaser, all the right, title, and interest, which the defendant had in and to such real estate, either in law or equity.<sup>1</sup>

1812—(15)  
Sec. 9.  
Lands sub-  
ject to execu-  
tion from a  
court of  
record.

§ 18. It shall be the duty of every sheriff, if he has levied any execution on property, and advertised the same agreeably to law, if the debtor or debtors shall, on the day of sale, produce to the sheriff other property in-lieu thereof, to cause the property so produced, to be offered for sale, in the same manner as if it had been originally levied upon.

1b. Sec. 10.  
Sheriff may  
accept other  
property, in  
lieu of that  
levied upon.

§ 19. The clerks of the several courts in this state, shall endorse on all executions by them issued, the several items contained in the bill of costs, in intelligible words and figures. (1)

1815—(12)  
Sec. 3.  
Clerk to en-  
dorse bill of  
costs on exe-  
cution.

§ 20. All executions, required to be issued on a return in vacation, shall bear teste on the return day of the last execution.

1818—(14)  
Sec. 4.  
Teste in va-  
cation.

§ 21. It shall be the duty of the sheriffs of the counties throughout the state, respectively, whenever any execution shall be placed in their hands, to proceed to levy the same, and make sale of the property thus levied on, in such times as by law is directed, and shall pay the amount, obtained by such sale, to the party or parties entitled to the same, on the application of such party or parties, or within ten days thereafter, under the penalty of forfeiting six per centum per

1819—(14)  
Sec. 16.  
Sheriff shall  
levy execu-  
tions and  
pay over  
money.  
Penalty.

<sup>1</sup> The equitable title to real estate can be made subject to the payment of debts only by suit in chancery.—See "Judicial Proceedings in Chancery," § 31—also § 74 of this title.

(1) An execution cannot be quashed, because more costs are taxed than are due. The error may be corrected, on motion to re-tax.—Anon. 2 *Stewt. Rep.* 228.



month, for every month such sheriff shall fail to pay over such money, collected as aforesaid.

1819—(14).  
Sec. 18.  
Penalty for  
neglect of du-  
ties.

Returning  
executions,  
&c.

§ 22. When any sheriff shall fail to perform the duties by this act required, the person or persons aggrieved, may move against such delinquent sheriff, and have judgment against such sheriff and his securities in office, for the amount he has failed to pay over as aforesaid, or for failing to return the execution in manner as above directed,<sup>1</sup> in the court from which such execution had issued, upon giving three days' notice of such motion to such delinquent sheriff or his securities in office: *Provided, however,* That time may be given to such delinquent sheriff to make his defence, upon good cause shown to the court before whom such motion may be made.

1811—(1)  
Sec. 2.  
Property of  
principal to  
be first  
levied on:  
Security to  
make affidavit.

§ 23. When an execution may issue against any principal and security, on any bill, bond, note, or other instrument, the sheriff, or other officer, shall levy on the property of the principal first, if he has any property in the county where the security resides: *Provided,* The security make oath, before some justice of the peace, that he is security on said bond, bill, note, or other instrument which affidavit shall be filed by the sheriff or other officer, with the execution.

1820—(14)  
Sec. 5.  
Sheriff to re-  
ceipt for mo-  
ney, and spe-  
cify items on  
execution.

§ 24. It shall be the duty of the sheriffs, coroners, and constables, in this state, to endorse upon all executions and other process, by virtue of which they may have collected any moneys, the amount so received, specifying how much debt, how much interest, how much commission, and how much cost; and shall receipt every such defendant or defendants, to such execution or process, for said amount; specifying the several sums so received, so as to make the receipt to any such defendant or defendants, correspond with any such officer's returns.

1834—(14)  
Sec. 1.  
Females not  
to be impris-  
oned on pro-  
cess of any  
kind.  
Proviso.

§ 25. In all contracts to be entered into by *femes sole*, or by any female acting as such, the body of any such female shall not be arrested and held in custody by virtue of any writ of *capias ad satisfaciendum*, or *capias ad respondendum*: *Provided,* That nothing, contained in this act, shall prevent the service on such female, of any writ or process wherein no bail is required.

1835—(13)  
Sec. 1.  
Execution  
may issue in  
term time, on  
affidavit.

§ 26. Upon the rendition of any judgment in any court of record in this state, it shall be lawful for the judge of said court, in term time, to order the clerk thereof to issue execution immediately, upon the affidavit of the plaintiff, or his or her agent or attorney, that the defendant is about to remove his or her effects, beyond the jurisdiction of the court, or that the plaintiff will be in danger of losing his or her demand by further delay.

*Ib.* Sec. 2.  
Defendant  
still has  
right of ap-  
peal, &c.

§ 27. The issuance of execution, in such case, shall not deprive the defendant or defendants of the right of appeal, writ of error, new trial, motion in arrest of judgment, or any other remedy to which, by law, he or they would otherwise be entitled.

*Ib.* Sec. 3.  
If execution  
issue within  
a year and a  
day after  
judgment,  
another may  
issue with-  
out *sci. fa.*

§ 28. When any execution shall have been issued, on any judgment or decree of the supreme court, or any circuit court, or county court within this state, or upon any judgment of a justice of the peace, within a year and a day after the rendition of any such judgment, or the making of any such decree, which shall not have been returned, *satisfied in full*, it shall be lawful, at any time thereafter, to issue execution on any such judgment or decree, without suing out any *scire facias* or other process, to revive the same. And when an execution shall have

<sup>1</sup> Executions are now required to be returned three days before the court, to which they are returnable.—See "Judicial Proceedings at Common Law,"—§ 131.



been issued or sued out on any such judgment or decree, within a year and a day from the rendition of any such judgment, or the making of any such decree, which shall not have been returned, satisfied in full, such judgment or decree shall not, afterwards, be presumed to be paid or satisfied, without payment or satisfaction be entered, on the record of the court, in which such judgment or decree shall have been rendered or made; or in the case of a judgment of a justice of the peace, on the docket in which such judgment shall have been made, or on the execution issued on such judgment or decree, unless no execution shall be issued on any such judgment or decree, for the space of ten years.

§ 29. And whereas, doubts have arisen, whether a *scire facias* would lie on a judgment where execution had not issued within the year and day; for remedy whereof, *Be it further enacted*, That on all judgments of record, where execution has not been issued within a year and a day, it shall be lawful for the plaintiff in any such judgment, to have *scire facias* against the defendant, commanding him to appear at a regular term of the court, in which such judgment is of record, and show cause, if any he or she have, why the plaintiff shall not have execution of his or her said judgment.

§ 30. Whenever any sheriff, or other officer, shall levy upon the real estate of any defendant, it shall be the duty of such officer to give notice in person or in writing, by leaving the same at the most usual place of such defendant's residence, if the defendant resides in the county; but if he be a non-resident of the county, by posting notice in some conspicuous and public place on the land levied on, in addition to the notice now required by law: and that such officer enter in his levy or return on said execution, the fact of said notice being given in person, in writing or otherwise.

EXECUTIONS FROM JUSTICES OF THE PEACE.

§ 31. Whenever it shall become necessary, for want of personal property, to levy an execution issued by a justice of the peace, on land, it shall be the duty of the officer levying such execution, to return the same to the next circuit court of his county; and such court shall, on motion of the plaintiff, and it appearing by an exhibition of the proceedings before the justice, that the same have been regular, order a sale of such land, or whatever part thereof may be necessary to satisfy such execution.

§ 32. Where any judgment is rendered by a justice of the peace, and the person, against whom such judgment may be rendered, removes to another county, it shall be lawful for such justice to issue execution to any county in this state, against the property of the person against whom judgment is rendered; which execution shall be certified by the clerk of the county court: and it shall be the duty of any legal officer of the county to which such execution may issue, to execute and make return of such execution, according to the mandate thereof, to the justice of the county from which execution issued.

§ 33. Justices of the peace, in issuing executions to counties, other than such as they may reside in, shall make the same returnable within any period of time, not less than thirty, nor more than ninety days.

§ 34. In all cases of executions running from one county to another, it shall be the duty of any justice of the peace of the county to which such executions may be directed, upon having the same pre-

If not satisfied, judgment not to be presumed satisfied, unless, &c.

*Ib.* Sec. 4. If no execution issue within a year and day, pl'tf may have *sci. fa.* to revive.

1839—(20)  
Sec. 1. When execution is levied on land, how notice is to be given to defendant.

1818—(14)  
Sec. 1. Circuit court may order sale of land levied on by a constable.

1822—(21)  
Sec. 1. Execution directed to another county, to be certified by clerk of county court. *But see* § 34.

1834—(17)  
Sec. 1. Returnable from 30 to 90 days.

*Ib.* Sec. 2. Justice may certify execution from another county.



sent for that purpose, and upon being satisfied of the hand-writing of the justice of the peace issuing such executions, to certify the same, which shall be sufficient evidence of the authenticity thereof.

1827—(39)

Sec. 1.  
Constable  
not to take  
defendant's  
body for  
want of  
goods.

Ib. Sec. 2.  
Justice not to  
issue *ca. sa.*  
unless ex-  
pressly re-  
quired.

§ 35. So much of the sixteenth section of an act entitled "An Act to revise, consolidate, and amend the several acts relative to justices of the peace and constables," as makes it the duty of constables, for want of goods and chattels on which to levy an execution, to take the defendant's body, by virtue thereof, is hereby repealed.

§ 36. It shall not be lawful for any justice of the peace to issue a *capias ad satisfaciendum*, unless expressly required by the plaintiff, his attorney, or agent; and it shall not be lawful for any constable to take the body of the defendant upon any execution, unless commanded thereby: and it shall be the duty of the constable, to release the body, when the defendant will point out property sufficient to discharge the demand with which he is charged in execution.<sup>1</sup>

## 2. SUPERSEDEAS OF EXECUTIONS.

1807—(21)

Sec. 29.  
*Distringas*  
in detinue.

§ 37. If a *distringas* issue in detinue, the court for good cause shown, may direct it to be superseded, so far as it relates to the specific thing, and to be executed for the alternative price or value only, if fixed in the judgment, or if the same shall afterwards be fixed by a writ of inquiry.

1821—(30)

Sec. 2.  
Judges may  
supersede  
executions  
improperly  
issued.

§ 38. The judges of the circuit courts, respectively, shall have power and authority in vacation, to supersede any execution, when it shall satisfactorily appear to them, or any of them, that the same shall have improperly issued from the clerk's office of any of the circuit courts of this state.<sup>2</sup>

1826—(6)

Sec. 1.  
On granting  
*supersedeas*,  
clerk to take  
bond.

§ 39. Whenever an order for a *supersedeas* to an execution, shall be granted by any of the judges of the circuit courts, it shall be the duty of the clerk of the court to which it shall be directed, before issuing the same, to take a bond from the party in whose favor it is granted, with good and sufficient security, to be approved by said clerk, in double the amount for which the execution shall have issued, payable to the plaintiff or plaintiffs in said execution; conditioned to pay and satisfy to the said plaintiff or plaintiffs, the sum of money specified in said execution, together with interest and costs, in case the *supersedeas* shall be set aside, or be annulled.

Condition.

Ib. Sec. 2.

*Supersedeas*  
annulled,  
bond to have  
the force of  
a judgment.

§ 40. The said bond, in case the *supersedeas* be set aside or annulled, shall have the force and effect of a judgment against all the obligors, and execution may be taken out against them all, for the sum of money for which the first execution shall have issued, together with lawful interest thereon, and the costs by the plaintiff or plaintiffs in the said execution, expended.

## 3. PRIORITY AND LIEN OF EXECUTIONS.

1807—(21)

Sec. 8.  
Goods bound  
from delive-

§ 41. No writ of *fieri facias*, or other writ of execution, shall bind the property of the goods, against which such writ is sued forth, but from the time that such writ shall be delivered to the sheriff,

<sup>1</sup> The law authorizing a *ca. sa.* has been modified since the passage of this law. See "Bail in Civil Cases," § 2.

<sup>2</sup> A similar power is given to the judges of the county courts by act of 1822. See "Judiciary—County Court,"—§ 8.



under-sheriff, coroner, or other officer, to be executed; (1) and for the better manifestation of the said time, such sheriff, coroner, or other officer, his deputy or agent, shall upon the receipt of any such writ, without fee for doing the same, endorse upon the back thereof the day of the month and year when he received the same; and if two or more writs shall be delivered against the same person on the same day, that which was first delivered, shall be first satisfied. If any sheriff, coroner, or other officer, to whom any execution shall be delivered, shall fail or neglect to endorse thereon, the day of the month and year when he received the same, every such person, for every such failure, shall be liable, on a motion to be made before the court from whence the execution issued, to a penalty not exceeding fifteen per centum, upon the amount of said execution, if it be for money; and if it be for a specific thing, one hundred dollars, to the use of the party injured, upon giving ten days' previous notice of such motion; and shall moreover be liable to the action of the party aggrieved, for all damages arising from such failure.

§ 42. Executions issued by a justice of the peace shall operate as a lien on the property of the defendant, from the time of the levy and not sooner; but if more than one execution shall come into the hands of the constable at the same time, against the said defendant, if all cannot be satisfied, each shall be entitled to a ratable proportion of the proceeds: and if more than one execution shall come into the hands of the same constable against the same defendant at different times, then the one first delivered, shall be first satisfied: and to show the priority between different executions, the constable shall endorse on each the time of delivery, and whether it be the first, second, or third, &c. in hand, against the same party—and the lien, so created by the levy of an execution by a constable, shall not be over-reached by the lien of any execution in the hands of the sheriff, not previously levied.

§ 43. The lien, created by the delivery of an execution from a court of record to the sheriff, shall continue to bind the property of the defendant, as between different judgment creditors in the courts of record in this state, in the following manner, viz: If a term shall elapse after the return of the first execution, before an *alias* shall be sued out and delivered to the sheriff, the lien, created by the delivery of the first writ of execution, shall be canceled and of no avail;—but if a term shall not have elapsed, and the *alias* shall be delivered to the sheriff before the sale of property, under a junior execution in favor of another creditor, the lien shall continue, notwithstanding the *alias* may not have been delivered, until after such junior execution; but if such *alias* shall not be delivered, until after the sale under such junior execution, the lien of the latter shall prevail.

§ 44. If the title of the property levied on be so doubtful as to induce the sheriff to require a bond of indemnity, if the party having the prior lien shall fail or refuse to give such bond, then the person, having the next lien, shall be authorized to give such bond, and have the property sold for his benefit.

ry of execu-  
tion to  
sheriff.

Penalty on  
officer hold-  
ing execu-  
tion, for not  
endorsing  
time of deliv-  
ery.

1828—(34)  
Sec. 1.  
Execution  
from justice  
to bind prop-  
erty from  
date of levy.  
Constable's  
duty in satis-  
fying differ-  
ent executions.

To endorse  
the time of  
delivery.

ib. Sec. 2.  
Priority of  
lien between  
judgment  
creditors.

ib. Sec. 3.  
First lien for-  
feited by fail-  
ure to indem-  
nify sheriff.

(1) The lien of an execution is discharged by an injunction. *Barnes v. Baker & Sledge, Min. Rep. 373.*



## 4. PROPERTY EXEMPT FROM EXECUTION.

1807—(21)  
Sec. 35.  
Goods and  
chattels on  
leased premi-  
ses exempted  
conditional-  
ly.

§ 45. No goods or chattels whatsoever, lying or being in or upon any messuage, lands, or tenements, which are or shall be leased for life or lives, term of years, or will, or otherwise, shall be liable to be taken by virtue of any writ of execution, on any pretence whatever, unless the party, so taking the same, shall, before the removal of the goods from such premises, pay or tender to the landlord or lessor thereof, or his agent, all money due for the rent of the said premises at the time of taking such goods, or chattels, in execution: *Provided, nevertheless*, That such rent arrears do not amount to more than one year's rent, and if more be due, then the party suing out such execution, paying or tendering to such landlord, or his agent, one year's rent may proceed to execute his judgment, and the sheriff or other officer, levying the same, is hereby empowered and required to levy and pay to the plaintiff, as well the money so paid for the rent, as the execution money.<sup>1</sup>

1831—(16)  
Sec. 1.  
Execution  
not to be lev-  
ied on crop  
until gather-  
ed.  
1833—(28)  
Sec. 1.  
Property ex-  
empted  
absolutely.

§ 46. It shall not be lawful for any sheriff or other officer, to levy a writ of *feri facias* or other execution on the planted crop of a debtor, or person against whom an execution may issue, until the crop is gathered.

§ 47. The following articles shall be retained by, and for the use of, every family in this state, free and exempt from levy or sale by virtue of any execution or other legal process, that is to say: two beds and furniture, two cows and calves, two spinning-wheels, two axes, two hoes, five hundred weight of meat, one hundred bushels of corn, all the meal that may at any time be on hand, two ploughs, one table, one pot, one oven, two water vessels, two pair cotton cards, all books, one churn, three chairs, one work horse, mule, or pair of work oxen, one horse or ox cart, one gun, all tools or implements of trade, twenty head of hogs, one thousand pounds of fodder, one loom, one man's saddle and one lady's saddle.<sup>2</sup>

[1843—(18)  
Sec. 1.]

1843—(19)  
Sec. 1.  
Forty acres  
of land ex-  
empted.

§ 48. In addition to the property now exempt, by law, from execution, for the use of every family in this state, upon all debts hereafter to be contracted, forty acres of land, (for the purposes of cultivation, not to exceed in value four hundred dollars, to be valued by three disinterested freeholders, to be summoned by the sheriff for that purpose, in case of a levy,) shall be and inure to the use and benefit of permanent and settled families: *Provided*, That nothing, herein contained, shall be construed to extend to or embrace any lands within the corporate limits of any town or city in this state.

If owner sell  
homestead,  
it is subject  
to judgment.

§ 49. When any homestead shall be sold by the owner, it shall be subject to the payment of every judgment against him or her, at the time of said sale.

## 5. RIGHT OF PROPERTY EXECUTED.

1807—(21)  
Sec. 16.  
Where right  
of property  
is doubtful,  
sheriff may  
demand in-  
demnity.

§ 50. If any sheriff shall levy an execution on property, and a doubt shall arise, whether the right of such property is in the debtor or not, such sheriff may apply to the plaintiff, his attorney or agent, for his bond, with good security, for indemnification for the sale of the property seized; which, if the plaintiff, his attorney or agent, re-

<sup>1</sup> The same restriction applies to crops raised on rented lands.—See "Rent."

<sup>2</sup> No property is exempt from execution for taxes.—See "Taxes," § 18.



fuses or fails to do, within ten days after such application, the sheriff or other officer shall be justified in delivering up such property to the party from whose possession it was taken.

§ 51. When the sheriff shall return on any execution, "that there is no property to be found in his county, belonging to the defendant," and it shall be suggested by the plaintiff, that the defendant has property in his own right, but hath fraudulently conveyed the same, for the purpose of defrauding his creditor, or to avoid the payment of the execution; notice, in the nature of a *scire facias*, shall be directed by the court to issue to the person or persons, in whose hands such property is supposed to be, or having such fraudulent conveyance, and on the return of the *scire facias*, executed as in other cases, an issue shall be made up and tried by a jury; and if the jury shall find the conveyance to be fraudulent, or without valuable consideration, the property, thus fraudulently conveyed or made over, shall be subject to the plaintiff's execution, in the hands of the defendant, or the person or persons thus notified.

§ 52. Where any sheriff shall levy execution on property claimed by any person, not a party to such execution, such person may make oath to such property; and it shall, thereupon, be the duty of the sheriff to postpone the sale or further execution of the judgment, until the next term of the circuit court of the county in which such execution is so levied; and such court shall require the parties concerned, to make up an issue under such rules as they may adopt, so as to try the right of property before a jury at the same term;<sup>1</sup> and the sheriff shall make return on said execution accordingly: *Provided*, That the person claiming such property, or his attorney, shall give bond to the sheriff, with security, in a sum equal to the amount of the execution, conditioned to pay the plaintiff all damages, which the jury, on the trial of the right of property, may assess against him, in case it should appear that such claim was made for the purpose of delay; (1) and the jury shall have power to give such damages, not less than ten per cent., as may seem reasonable and just to the plaintiff, against the claimant, in case it shall be sufficiently shown, that such claim was intended for delay only; and it shall be lawful for such jury to give verdict in manner aforesaid, by virtue whereof judgment may be entered up, and execution issued against such claimant; *And provided, also*, That the burthen of the proof shall be upon the plaintiff in the execution, and it shall be the duty of the sheriff to return the property levied upon, to the person out of whose possession the same was taken, upon such person entering into bond, with security, to the plaintiff in execution, in double the amount of the debt and costs, conditioned for the delivery of the property to the sheriff, whenever the claim of the property so taken shall be determined by the court; and if any person, to whom property is so returned, shall neglect or refuse to deliver the property to the sheriff, it shall be the duty of the sheriff forthwith to return the bond to the clerk's office of the circuit court; which bond shall

1812—(19)  
Sec. 1.  
How to proceed in case of fraudulent conveyance of defendant's property.

1812—(16)  
Sec. 7.  
Claimant of executed property to make oath and give bond.

Condition.

Burthen of proof to lie on plaintiff in execution.

Bond to have force of judgment.

1 An act passed December 18, 1821, "prescribing the manner of changing the venue in criminal cases, and for other purposes," has the following clause: "Sec. 2. *And be it further enacted*, That it shall be lawful, in issues, made up for the purpose of trying the right to any property taken in execution, for the judge trying such case to grant continuances, upon good cause shown, as in other cases, any law to the contrary notwithstanding."

(1) The bond, with security of one of several claimants, is sufficient to authorize the trial of the right of property.—*Marrs & Co. v. Ganit*, *Min. Rep.* 406.



have the force and effect of a judgment, and execution may be awarded by the court against all or any of the obligors, having ten days' notice thereof.

1821—(38)  
Sec. 2.  
Jury may assess damages.

§ 53. In all trials of the right of property as aforesaid, when the jury may be of opinion, that the claim was made to said property for purposes of vexation or delay, they shall have power to give such damages as the case may require, not exceeding fifteen per cent. on the amount of the execution.

*Ib. Sec. 4.*  
Claim, how dismissed.

§ 54. Whenever any claim to property shall be made, the same shall not be dismissed, discontinued, or withdrawn, but by the consent of the opposite party.

1822—(9)  
Sec. 1.  
When the claim does not exceed 50 dollars, Justice to issue *venire facias*.

§ 55. In all cases where property shall be taken by virtue of an execution or attachment, when the sum claimed doth not exceed fifty dollars, the person or persons claiming the same, and not being a party to the suit, may apply to some justice of the peace for a *venire facias*, directed to the constable or other officer, to summon seven good and lawful jurors to attend at such time and place as he the said justice shall appoint, not less than five, nor more than ten days from the time of issuing the same: *Provided, always*, That said justice of the peace, before he issues his *venire facias*, shall require the claimant to make oath or affirmation of his right to the property; and if the jury shall find the property liable to the execution, the person or persons laying claim, shall pay the costs of said trial, and execution may issue therefor; but if the property shall be found to be the property of the person laying claim, the plaintiff shall pay the costs.

Costs.

*Ib. Sec. 2.*  
Oath of jury.

§ 56. The jury, so summoned, when they appear at the place appointed, shall take the following oath, viz: "We, and each of us, do solemnly swear, (or affirm, as the case may be,) that we will well and truly inquire into the right of property now held by execution, (or attachment, as the case may be,) and a true verdict give according to evidence: So help me God." *Provided, always*, That if any of the jurors, summoned as aforesaid, fail to attend, the constable shall complete the number from the by-standers; and the verdict of the jury shall be returned to the justice, who shall enter judgment thereon; and if either party be dissatisfied with such judgment, they shall be entitled to an appeal to the next circuit court, where the trial shall be had the first term, by an issue made up by the parties or their counsel.

Constable may summon *talesmen*.

Parties may appeal.

*Ib. Sec. 3.*  
Jury may assess damages

§ 57. Where it may appear to the satisfaction of the jury, that the claim was set up for the purpose of vexation or delay, the jury shall assess the damages, not exceeding fifteen per cent. on the amount of the plaintiff's claim.

*Ib. Sec. 4.*  
Defaulting jurors and witnesses may be fined.

§ 58. If any person, being returned as a juror, to try the right of property as aforesaid, fail to attend, it shall be the duty of the justice attending said trial, to assess a fine on said juror, not exceeding five dollars; but if said juror shall attend within five days, and render a sufficient excuse to the justice aforesaid, his fine shall be remitted; and any witness, failing to attend and give evidence, when legally summoned for that purpose, shall be liable, in like manner, to a fine not exceeding five dollars; which fines shall be collected by the constable, and paid to the county treasurer.

*Ib. Sec. 5.*

§ 59. Nothing herein contained shall be so construed as to prevent the party, in whose possession the property is levied on, from retaining that possession, under the rules and regulations heretofore prescribed by law.



§ 60. Whenever any sheriff, coroner or constable, takes from the plaintiff in any execution, a bond indemnifying him for levying or selling property, the title to which is doubtful or disputed, if suit is instituted against him, or against any of his deputies for making such levy or sale, he may give notice to the principal and securities in said bond, of the pendency of such suit, whose duty it shall be to defend the same, and the judgment for the same amount shall be rendered by the court, on motion, in favor of said sheriff, coroner or constable, against the principal and security in such bond as may be obtained by the party suing such sheriff, coroner or constable, which judgment may be rendered at any time after a recovery against any sheriff, coroner, or constable: *Provided*, That the court shall, in all cases when required to do so by the obligors in any such bond, cause any issues in fact which may arise on such motion, to be tried by a jury.

1827—(18)  
Sec. 1.  
Sheriff may give notice to obligors in indemnity bond to defend suit—and have judgment against them on motion.

§ 61. The notice contemplated by this act shall be given to the obligors in the bond of indemnity, at least sixty days before the trial of any suit against said officers.

*Id.* Sec. 2.  
Notice to be sixty days before trial.

§ 62. It shall be the duty of the sheriff to prepare a bond, whenever property levied on by him shall be claimed and affidavit made, and good security offered for the trial of the right thereof; which bond shall be made payable to the plaintiff in the execution, and conditioned for the forthcoming of the property, if the same be found liable to the execution, and for the payment of such costs and damages as shall be recovered for putting in the claim for delay; for which bond the sheriff shall be entitled to a fee of fifty cents, to be taxed in the bill of costs.

1828—(38)  
Sec. 1.  
On claim of property, sheriff to prepare bond payable to plaintiff.

§ 63. Whenever property shall be levied on, by virtue of an execution from another county, if the same shall be claimed, and bond given to try the right thereof, the trial shall be had, as heretofore, in the county where the levy shall have been made; and it shall be the duty of the sheriff, to return the execution to the court from which it issued, with his return endorsed, and to make out a copy of the same, and of his return, and return such copy to the circuit court of the county in which the levy shall be made; and the copy of such execution, shall be sufficient for the court to proceed on, and try the right of the property levied on.

*Id.* Sec. 2.  
Proceedings on execution from another county.

§ 64. It shall be the duty of the jury, in all cases, when they shall find the property subject to the execution, to find the value of each article separately; and if the claimant shall fail to deliver the same or any part thereof, when required by the sheriff, it shall be the duty of the sheriff to go to the clerk, and endorse such failure on the bond by him returned, with a copy of the execution; whereupon, said bond shall have the force of a judgment, and the clerk shall issue execution against the claimant or claimants, and his or their security or securities, for the value of the property not delivered, as assessed by the jury, with interest from the date of the verdict; and if either party shall appeal, or sue out a writ of error, and wish to supersede the judgment, bond and security shall be given to the adverse party in double the value of the property levied on, if said value shall be less than the judgment, but if as much or more than the judgment, then bond shall be taken in double the amount of the judgment, and the damages given for delay.

*Id.* Sec. 3.  
Jury to find the value of each article separately.

Forfeiture of claimant's bond.

Appeal bond

§ 65. If property shall be levied on by a constable, by virtue of an execution from another county, and the property shall not be delivered on the day of sale, according to the delivery bond, the same shall be returned by the constable "forfeited," to any justice of

*Id.* Sec. 4.  
Proceedings on forfeiture of delivery bond under execution



from another county. the peace in his county, together with a copy of said execution; who shall proceed thereon, in the same manner as if judgment had been given by him; and said constable shall return the execution to the justice that issued it, with an endorsement showing the levy and the forfeiture of the bond.

*Ib. Sec. 5.*  
Trial of the  
right of prop-  
erty claim-  
ed in such  
case.

§ 66. If property so levied on shall be claimed by a third person, it shall be the duty of the constable to return, in like manner, a copy of the execution, and the forthcoming bond, to some justice of the peace in his county, with the fact of the claim being put in; and it shall be the duty of the said justice to proceed with the trial of the right of property, in the same manner as if the judgment in the case had been rendered by him; and said copy of the execution shall supply the place of the original in the trial; and said justice shall issue execution against the claimant and security, for the value of the property, if it shall not be delivered after being found subject to the execution; and in case of appeal, the *procedendo* shall go to the justice before whom the right of property shall have been tried, who shall issue all necessary process in obedience thereto; and when the proceedings shall be closed, he shall send a certificate of the result to the justice who issued the first execution; and it shall be the duty of the constable, so soon as a claim of property shall be put in, to return the execution to the justice who issued it, with a return endorsed, showing the levy and the claim.

*Ib. Sec. 6.*  
Trial of right  
not to ex-  
empt other  
property  
from execu-  
tion.

§ 67. Proceedings for the trial of the right of property, shall, in no case, prevent the plaintiff from going on to make his money out of other property than that levied on and claimed, if it be found; but the *supersedeas*, by appeal or writ of error, shall only apply to the property so levied on and claimed.

*Ib. Sec. 7.*  
Only one  
bond neces-  
sary.  
Release of  
damages by  
claimant.

§ 68. So much of the law now in force, as requires two bonds to be taken for the trial of the right of property, is hereby repealed: *Provided*, That a claim of property, in conformity to the provisions of this act, shall operate as a release by the claimant, of damages against the sheriff or other officer taking such property in execution.

## 6. DELIVERY BONDS.

1807—(21)  
Sec. 11.  
No security  
allowed on  
execution a-  
gainst sher-  
iff, &c. for  
money re-  
ceived by  
them.

§ 69. When an execution shall issue against the estate of any sheriff, under-sheriff, marshal of a corporation, coroner, or constable, or their securities, or their heirs, executors, or administrators, or either of them, upon a judgment obtained against such sheriff, under-sheriff, marshal of a corporation, coroner, or constable, or securities, or their heirs, executors, or administrators, or either of them, for money recovered by such sheriff, under-sheriff, marshal of a corporation, coroner, or constable, by virtue of any execution or process levied or executed by him or them, or for any money collected or received by them, in any manner, as sheriff, under-sheriff, marshal, coroner, or constable, no security for the payment of the money mentioned in such execution, at a future day, or to have the goods forthcoming at the day of sale, shall be taken or received; but the officer, taking such estate in execution, shall proceed immediately to the sale thereof, notwithstanding such security be tendered; and for the better direction of such officer, the clerk issuing such execution, shall endorse thereon, that "no security of any kind is to be taken."

*Ib. Sec. 30.*  
Sheriff liable  
for insuffi-  
cient bond.

§ 70. If a forthcoming bond be quashed as faulty, the sheriff taking the same shall be at all times liable for damages to the party injured, or his representatives.



§ 71. It shall be the duty of every officer levying any execution 1812—(15)  
on goods and chattels, if the person, whose property is levied on, or Sec. 4.  
who may have delivered up property in discharge of his body, will Property levied on may remain with defendant upon his giving bond.

§ 72. Every officer, taking any bond under this act, shall be entitled to seventy-five cents for taking the same, but shall not be entitled to any commissions on any execution, unless the money be made, or property actually sold. *Id.* Sec. 5. Officers' fees

§ 73. On the forfeiture of any bond given to any sheriff or coroner, 1829—(14)  
for the forthcoming of property by him levied on, by virtue of an execution, if the same was issued from the circuit or county court, of Sec. 8.  
the county of which he is sheriff or coroner, it shall be his duty to return the said bond and execution within ten days thereafter, to the clerk of said court, with the necessary endorsement thereon, of forfeiture; and it shall be the duty of the several clerks of the circuit and county courts of this state, within five days after any forthcoming bond has been returned by the proper officer as forfeited, to his said office, to issue execution thereon, "against all the obligors therein; and on any such execution, no security of any kind shall be taken; and the clerk issuing the same, shall endorse the same thereon, and the officer to whom the same may be directed, shall act accordingly." (1) And any clerk, sheriff, or coroner, failing to comply with the provisions of this section, shall be liable to the motion of the plaintiff or plaintiffs in execution, to be made before the court from which said execution issued; and on said court being satisfied, that said clerk, sheriff, or coroner, has failed to comply with the provisions of this section, it shall be lawful for said court, to enter judgment against said clerk, sheriff, or coroner, and his security or securities, for the sum due on said execution, with ten per centum damages thereon, and all costs: *Provided*, That said clerk, sheriff, or coroner, and his security or securities, or such of them as judgment is rendered against, shall have five days' notice of said motion. Clerk to issue execution thereon in five days. [a 1812—(15) Sec. 4.] Sheriff failing, liable to motion.

§ 74. Whenever any property is taken by a constable, by virtue of an execution issued by a justice of the peace, he shall, on the defendant in execution or other person for him, giving bond and security, in double the amount of the plaintiff's demand, including all costs, for the forthcoming of said property on the day of sale, permit the property to remain in the possession of such person until the day of sale; and in case such property is not forthcoming, agreeably to the condition of such bond, the constable shall endorse on such bond "forfeited," and return the same, together with the execution, in virtue of which it was taken, to the justice of the peace who issued said execution; and every forthcoming bond, so returned "forfeited," shall have the force and effect of a judgment; and the justice of the peace shall, immediately upon the return of every such bond "forfeited," issue execution thereon, against all the obligors 1832—(30)  
Sec. 2. Property levied on by constable, may be replevied. Forfeited bonds to have the force of judgments. Execution.

(1) To authorize a summary judgment against the security, on a bond for the delivery of property taken in execution, and claimed by a third person, the sheriff must have returned such bond forfeited. *Allen v. Hays*, 1 *Slewt. Rep.* 10.



[1807—(3)  
Sec. 4.]  
Allowance  
for keeping  
live stock.

Sale and no-  
tice.

in said bond, and shall endorse thereon, "no security of any kind is to be taken on this execution," and the constable to whom the same may be delivered shall act accordingly. (1) "But when such person or persons shall not be able, or shall refuse to give such security, in either case, and the property consisting of live stock, the constable shall take care of the same, and an allowance shall be made him out of the sale of such property, to be adjudged of by the justice to whom such execution is returned; and there shall not be more than fifteen days<sup>1</sup> between the constable's executing, and selling any property taken by virtue of an execution: the constable shall give ten days' notice, at least, of such sale, by advertising at the most public place or places in the neighborhood, of the time and place of such sale, where the person or persons may reside, from whom such property is taken.

NOTE.—Delivery bonds, taken by constables, shall be payable to the plaintiff.—See "Bail in Civil Cases,"—§ 21.

## 7. SALES UNDER EXECUTION.

1812—(15)  
Sec. 6.  
Where sher-  
iffs and con-  
stables shall  
sell property.

Notice of  
sale.

1820—(19)  
Sec. 2.  
Land and  
slaves, when  
and where to  
be sold.

1824—(19)  
Sec. 1.  
Sale of slaves  
by constables

*Ib.* Sec. 2.  
Notice.

1826—(26)  
Sec. 1.  
Sales be-  
tween 11  
A. M. and 4  
P. M.

§ 75. The sheriff or coroner of each county shall sell all property, which shall be sold by virtue of any execution, at the court-house of the proper county, if the property can conveniently be removed there, otherwise at some other convenient place; and every constable shall sell all property, which he may sell by virtue of any execution, at or near the residence of the debtor; and in all cases, the proper officer shall give at least ten days' previous notice of the time and place of sale, by advertisement set up near the residence of the debtor, and in cases of sales made by a sheriff or coroner, at the court-house of the proper county.

§ 76. It shall be the duty of the sheriff in each county, to sell all land and slaves, taken in execution by him, on the first Monday in every month, and not otherwise, at the court-house door of his county, to the highest bidder; and no other than the legal title, to land or other real estate, shall hereafter be sold or conveyed by virtue of any execution.

§ 77. All slaves, levied on by any constable, by virtue of an execution issued by a justice of the peace, shall be sold at public auction, at the court-house door, or at the place of holding court in the county in which such execution may issue, on the days and hours prescribed by law, for the sales of slaves by sheriffs.

§ 78. It shall be the duty of the constable, to give at least twenty days' notice, in three or more public places in his county, one of which to be at the court-house door, of the time and place of selling such slave, with a description of such slave to be sold.

§ 79. All sales made hereafter, by any sheriff, coroner, or constable, shall be made between the hours of eleven o'clock in the forenoon, and four o'clock in the afternoon.

(1) Delivery bonds taken by constables may be good as common law bonds, though not taken strictly as the statute requires. *Sugg v. Burgess & Davis*, 2 *Stewt. Rep.* 509.

<sup>1</sup> Except in the case of slaves, where twenty days' notice is required.—See § 78.



## 8. PROCEEDINGS AGAINST OFFICERS HOLDING EXECUTIONS.

1. *Sheriffs,  
Coroners, &c*

§ 80. *Whereas*, doubts have arisen in what manner judgment should be rendered against any sheriff, coroner, or marshal of a corporation, who shall fail to return an execution to the office from whence it issued, on or before the return day thereof :

*Be it enacted*, That when any writ of execution, or attachment for not performing a decree in chancery, shall come into the possession of any sheriff, coroner, or marshal of a corporation, and he shall fail to return the same to the office from whence it issued, on or before the return day thereof, it shall be lawful for the court, ten days' previous notice being given, upon motion of the party injured, to fine such sheriff, coroner, or marshal of a corporation, in any sum not exceeding five dollars per month, for every hundred dollars contained in the judgment or decree, on which the execution or attachment so by him detained was founded, and so, in proportion, for any greater or less sum, counting the aforesaid months from the return day of the execution or attachment, to the day of rendering judgment for the said fine.

Sec. 31.  
Judgment  
against  
sheriff, &c.  
on failing to  
return execution.

§ 81. If any sheriff or other officer shall make return on any writ of *feri facias* or *venditioni exponas*, that he hath levied the debt, damages, or costs, as in such writ is required, or any part thereof, and shall not immediately pay the same to the party to whom the same is payable, or to his attorney; or shall return upon any writ of *capias ad satisfaciendum*, or attachment for not performing a decree in chancery, for payment of any sum of money, that he hath taken the body or bodies of the defendant or defendants, and hath the same ready to satisfy the money in such writ mentioned, and shall have actually received such money of the defendant or defendants, or have suffered him, her, or them, to escape, with the consent of such sheriff, under-sheriff, or officer, and shall not immediately pay such money to the party to whom the same is payable, or his attorney, then, and in either of the said cases, it shall be lawful for the creditor, at whose suit such writ of *feri facias*, *venditioni exponas*, *capias ad satisfaciendum*, or attachment shall issue, upon a motion made at the next succeeding court from whence such writ shall issue, to demand judgment against such sheriff, officer, or under-sheriff, or securities of such under-sheriff, for the money mentioned in such writ, or so much as shall be returned levied on such writs of *feri facias* or *venditioni exponas*, with interest thereon, at the rate of fifteen per centum per annum, from the return day of the execution, until the judgment shall be discharged; and such court is hereby authorized and required to give judgment accordingly, and to award execution thereon: *Provided*, Such sheriff or officer have ten days' previous notice of such motion.<sup>1</sup>

Ib. Sec. 32.  
Proceedings  
against sher-  
iff for failing  
to pay money  
received  
on execution.Ten days'  
notice.

§ 82. And whereas, it is unreasonable that sheriffs should be obliged to go out of their counties to give notice to creditors, at whose suit any person may be in the custody of such sheriff, or to pay money levied by execution: *Be it therefore enacted*, That where any execution shall be delivered to the sheriff of any other county, than that where any creditor resides, such creditor shall name some person in the county where the execution is to be levied, to be his,

Ib. Sec. 33.  
Creditor to  
appoint  
agent in  
county  
where exe-  
cution is to  
be levied.

<sup>1</sup> The remedial provisions of this section are in a great measure superseded by the act of Jan. 12, 1826.—See § 83.



her, or their agent, for the particular purpose of receiving the money on such execution, and for giving to, and receiving from, the sheriff, any notices which may be necessary, relating thereto; and payment made, and notices given to such agents, shall be as effectual as if made or given to the creditor; and if any creditor shall fail to appoint such agent, no judgment shall be entered against the sheriff for non-payment of the money mentioned in such execution, unless a demand thereof shall have been first made of such sheriff, in his county, by the creditor, or some other person having a written order from him; nor in case of failure in appointing such agent, shall the sheriff or prisoner be obliged to give notice previous to the discharge of such prisoner, either for want of security, for his prison fees, or upon his taking the oath of an insolvent debtor; but such prisoner shall be discharged in those cases, respectively, without any notice to be given to the creditor so failing.

On failure  
sheriff or pri-  
soner not  
bound to  
give notice,  
either of dis-  
charge or of  
taking the  
oath.

1836—(17)

Sec. 1.  
Motion  
against sher-  
iff, &c. for  
failing to pay  
over money  
received.

§ 83. Whenever any clerk, sheriff, or coroner, shall fail or refuse to pay over any money, collected or received by him, upon any execution, on the application of the plaintiff or plaintiffs, his, her or their attorney or agent, it shall be lawful for the court, to which the said execution shall be returnable, upon one day's notice being given to the said clerk, sheriff, or coroner, and on motion of the plaintiff or plaintiffs in said execution, to render judgment against the clerk, sheriff, or coroner, thus failing, and his security, or any or either of them, for the amount of money thus received, together with five per centum upon the amount of the said execution as damages, for each and every month, for which the said money shall have been detained, after demand made, together with the costs of suit.

*Ib. Sec. 2.*  
For false re-  
turn, dama-  
ges, &c.

§ 84. Whenever any sheriff or coroner shall make any return of any execution, which the plaintiff or plaintiffs, his, her, or their attorney, shall suggest to the court to be a false return, the court shall forthwith cause an issue to be made up to try the falsity of said return; and if the said return be found false, judgment shall be rendered against the said sheriff or coroner, and his securities, or any or either of them, for the amount of money specified in said execution, together with ten per centum damages on the amount of the execution, and also the costs of suit. (1)

*Ib. Sec. 3.*  
Proceedings  
on sugges-  
tion that the  
money could  
have been  
made.

§ 85. Whenever any sheriff or coroner, to whom an execution shall have been delivered, shall fail to make the money on or before the first day of the term of the court, to which said execution shall be returnable, and the plaintiff or plaintiffs, his, her, or their attorney, shall suggest to the court, that the money could have been made, by said sheriff or coroner, with due diligence, it shall be the duty of the court forthwith to cause an issue to be made up, to try the fact; and if it shall be found by the jury, that the money could have been made by the sheriff or coroner, with due diligence, judgment shall be rendered against said sheriff or coroner, and his securities, or any or either of them, for the sum of money specified in said execution, together with ten per centum on the amount of said execution, as damages, and also the costs of suit.

Judgment,  
&c.

*Ib. Sec. 4.*  
Courts may  
issue attach-

§ 86. It shall be lawful for the court, to which an execution shall

(1) In an action against a sheriff for a false return, there must be a fraudulent intention to charge the defendant. *Sutherlands v. Cunningham*, 1 *Stewt. Rep.* 438. If a party is injured by an improper return, the remedy is by a special action on the case, and damages are recoverable according to the loss.—*ib.*



be returnable, to issue an attachment against any sheriff or coroner, who shall have received any execution, and failed to return the same; and also, to issue an attachment against any person who shall, as clerk, or sheriff, or coroner, have collected or received money upon any execution, and fails to pay over the same, upon its appearing to the court, that the party, thus failing, has had one day's notice of the motion to be made for the said attachment.<sup>1</sup>

§ 87. If any constable shall fail to return any execution issued by a justice of the peace, and delivered to said constable, to the justice issuing the same, on or before the day on which such execution is made returnable, it shall be lawful for the plaintiff in the execution, his agent or attorney, to move said justice, after having given three days' notice, of the time and place of making such motion, to said constable, or his security or securities, for judgment against said constable and his securities, for the amount for which such execution issued, with interest thereon, from the day on which the judgment was granted, to the day of making said motion, together with the costs of the motion; whereupon, it shall be the duty of said justice, to render judgment against said constable and his security or securities, according to the above provision.

§ 88. Any constable, who shall collect all or any part of an execution, issued by a justice of the peace, and shall refuse or fail to pay said money so collected, to the plaintiff in said execution, his agent or attorney, on demand, shall forfeit and pay to said plaintiff ten per centum per month on the sum collected as aforesaid, and at that rate for a greater or less sum, or a longer or shorter time; and it shall be lawful for the plaintiff in said execution, on giving to said constable, or his security or securities, three days' previous notice of the time and place of making such motion, to move for and obtain judgment, against said constable and his security or securities, before the justice of the peace who issued said execution, for the amount of money collected as aforesaid, together with said ten per centum per month as aforesaid, in cases where the addition of ten per centum per month to the money collected as aforesaid, will not exceed the sum of fifty dollars:—and in cases where the addition of ten per centum per month, to the money collected as aforesaid, will exceed the sum of fifty dollars, the said motion, against the said constable and his securities, shall be made to, and judgment rendered by, either the circuit or county court of the county in which the justice resided, who issued said execution, on giving the constable or his security or securities three days' previous notice of the time and place of making such motion; which judgment, rendered as aforesaid, shall bear interest at the rate of five per cent. per month, from the rendition of judgment until the same be paid; and the execution issued on said judgment shall, in the body thereof, express, that the judgment, on which it issued, bears five per centum per month.

§ 89. Any judgment, rendered as authorized by this act, shall not be stayed, as judgments of justices of the peace are now authorized by law to be.

§ 90. Whenever any constable shall make return on any execution, which the plaintiff or plaintiffs, his or their attorney, may wish

ments  
against de-  
faulting offi-  
cers.

2. Constables.  
1824—(21)  
Sec. 1.  
Proceedings  
against constable for not  
returning  
execution.

*Ib.* Sec. 2.  
Constable  
failing to pay  
over money,  
liable to motion,  
and  
forfeiture of  
10 per cent.  
per month.

When damages, &c. exceed 50 dollars, the motion to be made in circuit or county court, and judgment to bear 5 per cent. per month interest.

*Ib.* Sec. 3.  
Judgment not to be stayed.

1829—(14)  
Sec. 9.  
False return  
by constable,

<sup>1</sup> When judgment is rendered against the sheriff for the default of his deputy, he may have judgment against such deputy and his securities, by motion, on one day's notice. See "Sheriffs"—§ 11.



howtried.

Judgment  
thereon.

*Ib. Sec. 10.*  
Proceedings  
where plain-  
tiff suggests  
that constable  
might have made  
the money.

Damages.

to contest as false, he, she, or they may notify such constable and his security or securities, or either of them in writing, that at the next circuit or county court for said county, he, she, or they will suggest to said court, that said return is false; and on the said constable and his security or securities, or either of them having five days' notice of said motion, said court shall, at said term, cause an issue to be made up, to try the falsity of said return; and if the return be found false, judgment shall be rendered against said constable and his security or securities, or such of them as may have been notified, for the amount of money specified in said execution, together with ten per centum damages on the amount of said execution, and also all costs.

§ 91. Whenever any constable, to whom an execution shall have been delivered, shall fail to make the money on or before the return day thereof, it shall be lawful for the plaintiff or plaintiffs, his or their agent or attorney, to notify said constable and his security or securities, or any or either of them in writing, that at the next circuit or county court for said county, he, she, or they will suggest to said court, that the money could have been made by said constable, with due diligence; and said court shall, on being satisfied that said notice has been served five days before said court, on said constable, and his security or securities, or either of them, cause an issue to be made up, to try the fact; and if it shall be found by the jury, that the money could have been made by said constable with due diligence, judgment shall be rendered against said constable and securities, (if notice was served on them severally, if not, against such of them as are notified,) for the sum of money specified in the execution, together with ten per centum on the amount of said execution, as damages, and also all costs. [See "Justices of the Peace and Constables,"—§ 7 and 21.]

## EXECUTORS AND ADMINISTRATORS.

1806—(1)

Sec. 20.

To whom ad-  
ministration  
may be  
granted.

§ 1. If any person die intestate, or the executors named in any testament renounce the executorship, or refuse or neglect, for the space of forty days after the death of the testator, to exhibit such testament for probate, then administration of the goods and chattels, rights and credits of such intestate, or of such testator, with the testament annexed, shall be granted to the widow, or the next of kin of such intestate or testator, or to some of them; and in case of their, and each of their refusal, then to a principal creditor or creditors of such intestate or testator; and if none of them will accept thereof, then to such other proper person or persons as will accept the same.

1821—(4)

Sec. 12.

Oath of exec-  
utors and ad-  
ministrators,  
with the will  
annexed.

§ 2. Before issuing letters testamentary, or letters of administration with the will annexed, such executor or executrix, administrator or administratrix, with the will annexed, shall take, and the judge shall administer the following oath, viz: "You swear that the writing, which has been admitted to be recorded as the last will of \_\_\_\_\_, contains the true last will of said \_\_\_\_\_, as far as you know or believe, and that you will well and truly execute said will, according to law, and the directions thereof, as far as the goods and chattels, rights and credits of the said \_\_\_\_\_ will extend; and that you will return a true inventory of all said goods, chattels, and credits, so far as they may come to your knowledge, a true account



of sales, and your said administration, as required by law." And before issuing any other letters of administration, such administrator or administratrix shall take, and the judge shall administer the following oath, viz: "You swear that \_\_\_\_\_, deceased, died without any lawful will, as far as you know or believe, and that you will well and truly administer all and singular the goods, chattels, and credits of the said deceased, and return a true inventory thereof, so far as they may come to your knowledge, and a just account of sales, and of your said administration, as required by law;" but when letters testamentary, or of administration, shall be granted on an authenticated copy of a will, and in such other cases, as in the opinion of the judge, may require a change in the form of the oath, the oath may be administered in such form as, in the opinion of the judge, is suitable to the nature of the case.

Oath of other administrators.  
Form.

May be varied.

§ 3. In all cases, before granting letters testamentary, or of administration or guardianship, the executor or executrix, administrator or administratrix, or guardian, shall enter into bond, with at least two sufficient securities, approved by the judge, payable to him and his successors in office, in such penalty as he may direct, which shall be at least equal to double the estimated value of the estate, with a condition as follows: "The condition of the above obligation is such, that whereas the above bound \_\_\_\_\_ has been duly appointed administrator of the estate of \_\_\_\_\_, (or administratrix, or executor or executrix of the last will of \_\_\_\_\_, or guardian of \_\_\_\_\_, as the case may be,) now if the said \_\_\_\_\_ shall well and truly perform all the duties which are, or may be, by law, required of him (her or them) as such administrator, (or administratrix, executor, or executrix, or guardian, as the case may be,) then the above obligation to be void, otherwise to remain in full force." Such bond shall not become void, on the first recovery, and may be put in suit, and prosecuted from time to time, against all, or any one or more of the obligors, in the name and at the cost of any person or persons injured by a breach thereof, until the whole penalty shall be recovered thereon.

1b. Sec. 12. Executor's and administrator's bond.

How proceeded on.

§ 4. The orphans' court shall have full power, when letters of administration shall be granted upon insufficient security, to order and direct such administrators to give further and sufficient security, by bond in the usual form. And if it appear, upon examination, that any administrator hath embezzled, wasted, or misapplied all, or any part, of the decedent's estate, or shall refuse or neglect to give bond, with security as aforesaid, the said court may forthwith revoke or repeal the letters of administration; and, thereupon, grant letters of administration to such other person or persons, having a right thereunto, as will give bond in manner and form aforesaid; who may have actions of trover, detinue, account, and on the case, for such goods or chattels as came to the possession of the former administrators, and were withheld, wasted, embezzled, detained, or misapplied, by any of them, and no satisfaction made for the same.

1806—(1)  
Sec. 40.  
Court may require further security of administrators.

Revoke, and grant anew, letters of administration.  
Administrator's remedy against predecessor.

§ 5. Any executor, executrix, administrator, administratrix, or guardian, may be ordered to give further security, on complaint of any of his, her or their securities, or of any of their representatives, or when there shall appear sufficient grounds to believe, that he, she, or they, are about to misapply, embezzle, or remove from the state, the property committed to his, her, or their charge, on proof of gross neglect in the performance of any of the duties, on him, her or them enjoined by law, or that his, her, or their securities, have become insufficient, as well as for the causes heretofore specified; and on proof

1821—(4)  
Sec. 14.  
Additional grounds for requiring further security of executors, &c.



that such executor or executrix, administrator or administratrix, or guardian, has removed from the state, or otherwise endeavored to elude the service of process on any such complaint, the same may be heard and determined, though the citation be not executed.

1806—(1)  
Sec. 41.  
Remedy  
where execu-  
tors or ad-  
ministrators  
are absent,  
insane, or  
unable to dis-  
charge their  
trust.

§ 6. If any executor of any last will and testament, or administrator of an intestate's estate, residing out of this state, at the time of taking that trust; or afterward removing out of the said state, shall refuse or neglect, after due notice from the orphans' court, to render his account, and make settlement of such estate, with creditors, legatees, or heirs, or their legal representatives; or if any executor or administrator shall become insane; or if any administrator becomes otherwise incapable of, or evidently unsuitable to discharge the trust reposed in him; the said orphans' court are authorized and empowered in each of the said cases mentioned in this section to grant letters of administration, with the will annexed, or otherwise, as the case may require, to such person or persons, as may be entitled to the same, and as to the said court shall seem meet. And the administrator thus appointed shall have the same power and authority to administer the estate of the deceased, not administered upon, by such former executor or administrator, and be subject to the same duties, in as full and ample a manner, as if the executor or administrator, so removed or residing out of this state, as aforesaid, were actually dead.

1821—(4)  
Sec. 16.  
Change of  
security.

§ 7. Where new security shall be ordered and taken, of any executor, executrix, administrator, administratrix, or guardian, the judge may direct such alteration in the condition of the bond as the case may require, and may order the original securities to be discharged entirely, or from the time of taking such new security, as to him shall seem proper.

1810—(3)  
Sec. 4.  
Suits by ad-  
ministrator  
*ad colligen-*  
*dum*, to inure  
to adm'r in  
chief.

§ 8. The judge of the orphans' court, whenever he may deem it necessary, shall appoint an administrator or administrators, to collect the goods of the deceased; and in case the administrator or administrators so appointed, shall commence a suit or suits, the same shall not abate by the appointment of an administrator or administrators in chief, but the suit or suits may progress for the use of the administrator or administrators in chief.

1821—(4)  
Sec. 15.  
Executors,  
&c. may re-  
sign.

§ 9. Any executor, executrix, administrator or administratrix, or guardian, may, by writing, by him or her subscribed and delivered into the clerk's office, resign his or her authority:—but in such cases, he, she, or they, and his, her, or their securities, shall be bound for all the assets or effects, which shall not have been duly administered or applied, or shall not be delivered to their successors, respectively.

*Ib.* Sec. 17.  
Administra-  
tion may be  
committed to  
the sheriff or  
coroner.

§ 10. Where no one shall have been admitted and qualified as executor, executrix, administrator, or administratrix, within three months after the death of the deceased, or where the executorship or administration shall have become vacant, by death, resignation, or removal, the judge, having jurisdiction of the case, may commit the administration to the sheriff or coroner of the county, and (unless the judge shall otherwise order,) no other oath, bond, or security, shall be necessary to be given, than the bond and oath of office, already taken and given by such sheriff or coroner; but, on his bond for the performance of the duties of his office, he and his securities shall be liable for his administration, and such bond may be sued, and judgment, from time to time, recovered thereon, in the same manner as is or may be provided by law, in case of other bonds of executors,



administrators, and guardians. (1) The administration so committed to any sheriff or coroner, may at any time be revoked, on the application of any of the executors, kindred or creditors of the deceased, and the executor permitted to qualify, or another administrator be appointed: during any contest about the validity of a will, the infancy or absence of the executor, or administrator, and in such other cases, not otherwise provided for, as may so require, the judge may appoint an administrator or administratrix, with such limited authority as the case may require, and when the necessity of the case may require, such administrations may be granted or revoked forthwith, without any citation. "So much of the aforesaid act,"<sup>1</sup> as makes it the duty of the judges of the county courts to commit administration to the sheriff or coroner, in certain cases therein designated, shall be taken and strictly construed, so as to attach the said administration to the offices of sheriff or coroner, and not to the person.

May be revoked.

Limited administration

[a 1823—(11) Sec. 15.] Administration to attach to the office of sheriff, &c. —not to the person.

§ 11. Every orphans' court, granting letters testamentary or letters of administration, shall nominate, and, by warrant, appoint three or more judicious and discreet persons, appraisers of the estate of the decedent, who shall return their appraisement on oath, in such time as the court shall appoint, of all the personal estate of such decedent, to them shown; which appraisement, if subscribed and sworn to by the executor or administrator, may be considered as an inventory of such part of the estate, as had theretofore come to hand: and inventories (which the executor or administrator, in all cases, shall return at the time limited by the court) and appraisements, may be given in evidence in any suit by or against the executor or administrator, but shall not be conclusive for or against him, if it be shown that the estate was really worth, or was *bona fide* sold for, more or less than the appraisement.

1806—(1) Sec. 26. Appraisers to be appointed.

§ 12. It shall be the duty of executors and administrators, within two months after the granting letters testamentary or letters of administration, to publish in some newspaper, printed in this state, a given notice to creditors to exhibit their claims against the estate of their testator or intestate, to exhibit the same within the time limited by law, or the same will be barred; which notice shall state the time of granting such letters testamentary or letters of administration, and shall continue to be published once a week for six weeks.

1815—(6) Sec. 3. Ex'rs, &c. to give notice to creditors to exhibit their claims.

§ 13. It shall not be lawful for any executor or executors, administrator or administrators, guardian or guardians, to take the estate, or any part thereof, of any testator or intestate, at the appraised value, or to dispose of the same at private sale, except where the same is directed by the will of the testator. (2) But in all cases, where it may be necessary to sell the whole, or any part, of the personal estate of any testator or intestate, it shall be the duty of the executor, administrator or guardian, to apply to the orphans' court of their county, for an order of sale, and, upon obtaining the same, to adver-

1809—(6) Sec. 1. Executors, &c., not to take the estate at its appraised value, nor to dispose of it, except at public sale.

(1) Actions against sheriffs on their bonds, for failing to administer, properly, estates committed to them in virtue of their office, must be brought in the name of the judge of the county court, for the use of the party injured, and the declaration must show, for whose benefit the trial is brought, or it is demurrable. Sheriffs, in such cases, are liable on their sheriff bonds, in the same manner as other administrators are on their administration bonds. *The Governor v. Gantt, et al.*, 1 *Stewt. Rep.* 388.

<sup>1</sup> The act of June 14, 1821. See 1821—(4) § 17, forming the preceding part of this section.

(2) A purchase by an administrator, at his own sale by auction, is not void in itself; but is *prima facie* valid, if no unfairness appears. *Brannon, et al. v. Oliver*, 2 *Stewt. Rep.* 47.



tise the time and place of such sale, in three or more public places in their county, at least thirty days previous to the day of sale, and then and there proceed to sell the same, at public sale, to the highest bidder, giving at least six months' credit, the purchaser giving bond with approved security.

1815—(6)

Sec. 4.

Sales to commence at 12 o'clock and end at 5. May be continued, by giving notice

§ 14. No sale by executor or executrix, administrator or administratrix, shall commence before the hour of twelve o'clock, on the day set apart for the same, nor continue longer than the hour of five o'clock in the afternoon of such day; but in case the time aforesaid shall be insufficient to complete the sale of such estate, intended to be sold, such executors or administrators may, on such event, continue such sale from day to day, by giving public notice thereof to the attending company, at the conclusion of the sale of each day, of such continuance, which continued sale shall commence and end within the hours aforesaid; and all sales, which may be commenced and held in any other manner than herein directed, shall be null and void.

1810—(3)

Sec. 5.

Orphans' court may authorize executor, &c. to dispose of crop at private sale.

§ 15. *Whereas*, it may sometimes become necessary to dispose of the crop belonging to the estate of deceased persons at private sale: *Be it therefore enacted*, That upon an application being made by any executor, administrator, or guardian, to the orphans' court of any county, or in vacation, to the judge of said court, such court or judge may grant an order for the sale of the crop belonging to the estate, in such manner as shall seem reasonable and the situation of the estate to require; and in all cases, it shall be the duty of the court to require of the applicant or applicants, an account of his proceedings under such order, to be rendered to the next orphans' court of their county.

1822—(18)

Sec. 1.

Adm'r or executor may petition county court for authority to sell real estate. Requisites of petition.

§ 16. It shall be lawful for an administrator of any deceased intestate, or the executor of any deceased testator, who has not power by the will of the testator to sell real estate for the purpose of paying debts, or to make more equal distribution among the heirs, devisees, or legatees, to file a petition in the orphans' court of the county in which letters of administration, or letters testamentary have been granted, setting forth that the personal estate of his intestate or testator, (as the case may be,) is not sufficient for the payment of the just debts of such intestate or testator; or that the real estate of such testator or intestate cannot be equally, fairly, and beneficially divided among the heirs or devisees of such intestate or testator, without a sale of the real estate, setting out and particularly describing in such petition, the estate proposed to be sold, and the names of the heirs or devisees of such intestate or testator, and particularly stating which are of age, and which are infants, or *femes covert*.

*Ib.* Sec. 2. Court to issue citation to heirs.

§ 17. Upon the filing of such petition in open court, it shall be the duty of the court to order citations to all the heirs or devisees, who are of full age, and to the husbands of such as are *femes covert*, requiring them to appear on a particular day, mentioned therein, at a regular or adjourned term of said court, "not less than forty days from the time of issuing such citations, and answer said petition; and it shall also be the duty of said court, forthwith to appoint guardians to such of the heirs or devisees as are infants, to answer and defend against said petition; which guardian shall not be the petitioner, or of heir to the petitioner.

[a 1806—(1)  
Sec. 23.]

And appoint guardians.

*Ib.* Sec. 3. Guardians to deny allegations, and may employ counsel.

§ 18. It shall be the duty of the guardian or guardians appointed as aforesaid, to deny all the allegations contained in said petition, without being verified by oath; and, if necessary, to employ counsel to defend for his ward or wards.



§ 19. Said court shall not decree or order sale of the real estate described in such petition, where the allegations are denied by the answer; unless satisfied by proof to be taken by deposition as in chancery cases, and filed in the cause; and where a sale of the estate shall be ordered or decreed, by the court, commissioners shall be appointed in the order or decree, with directions to sell the estate, either for money, or on credit, as may be most just and equitable, and to report to said court, at the time limited in the order or decree.

*Ib. Sec. 4.*  
Proof by  
depositions.

Commission-  
ers to sell es-  
tate.

§ 20. The petitioner shall not receive the bonds or money returned and reported by the commissioners, until he shall enter into bond and sufficient security, to be approved by the court, conditioned for the faithful payment and application of the money, arising from such sale, according to the final decree.

*Ib. Sec. 5.*  
Petitioner to  
give bond be-  
fore receiv-  
ing proceeds.

§ 21. The said court shall, upon the coming in of the report of the commissioners, render a final decree in the cause; and if the terms of the sale have been complied with by the purchaser of the estate, the commissioners shall be directed by such final decree to convey the estate sold to the purchaser.

*Ib. Sec. 6.*  
Court to ren-  
der decree.  
Commission-  
ers to con-  
vey.

§ 22. Whenever the court shall, upon a full hearing of the cause, decide that the estate shall not be sold, the judge shall dismiss the petition at the costs of the petitioner, to be levied of his own estate.

*Ib. Sec. 7.*  
Petitioner  
failing, to  
pay costs.

§ 23. Every executor, administrator, or guardian, empowered by the orphans' court, or supreme, or superior court in chancery, to sell the lands, tenements, and hereditaments, or any part thereof, of any testator, intestate, ward, idiot, lunatic, or person *non compos mentis*, shall, before he or she obtains the order of sale from the office of the register, or clerk, enter into bond with sufficient securities, to the judge of the orphans' court, of the proper county, that he or she will observe the rules and directions of law, for the sale of real estates by executors, administrators, or guardians, (as the case may be,) and that he or she will well and truly account for the proceeds of the said sale, and that the same shall be disposed of agreeably to the rules of law.

1806—(1)  
Sec. 30.  
Executors,  
&c., to give  
bond con-  
cerning the  
sale of lands.

§ 24. The executor or administrator, who may be ordered to sell any lands, tenements, or hereditaments, of any testator or intestate, shall give notice by advertisements, put up at three or more public places in the county, where the lands, tenements, or hereditaments are situated, of the time and place of selling the same, at least forty days before the time of sale; and by publishing such advertisements in one of the public newspapers, in this state, for three weeks successively, before such days of sale.

*Ib. Sec. 31.*  
Executor,  
&c., to give  
notice of sale  
by advertise-  
ment.

§ 25. In all cases, where petitions may be presented to the judge of any county court for the sale of any real estate, pursuant to the provisions of the above recited act, if the petitioner will make oath, that any of the heirs or devisees live beyond the limits of this state, or that their residence is unknown to the petitioner, a notice by advertisement, published in one or more newspapers, for such length of time, as the judge of the said court may order, shall be deemed and held as sufficient notice, pursuant to the provisions of the aforesaid act, authorizing the sale of real estate.

1823—(10)  
Sec. 1.  
What suffi-  
cient notice  
when heir's  
residence is  
beyond state,  
or unknown.  
a See § 16 to  
22.

§ 26. Executors and administrators, within three months after their appointment, shall return to the clerk's office, a full inventory of all the goods and chattels, rights of, and debts due or accruing to, the testator or intestate, at the time of his death, which have come to their possession or knowledge, setting forth the times at which

1821—(4)  
Sec. 22.  
Inventories  
to be return-  
ed within 3  
months.



And account  
of sales in  
like time.

debts are due, and whether due by open account, promissory note or bond; and within three months after such sale, shall in like manner return an account thereof. Inventories and accounts of sales shall be subscribed and sworn to by the executor or administrator returning the same, before the judge, clerk, or some justice of the peace.

1806—(1)  
Sec. 21.  
Powers and  
duties of  
judge of or-  
phans' court,  
in relation to  
executors,  
administra-  
tors, &c.

§ 27. The judge of the county court of the county in which such judge resides, is empowered and required, to take, receive, and audit all accounts of executors, administrators, and guardians; to receive wills exhibited for probate, applications for administration, inventories and appraisements; and to order such inventories and appraisements, duly made and sworn to, to be recorded; to appoint guardians to minors, of their own election; to cause to be issued, all citations and other necessary process, returnable to the next term of said court. And the said judge, after examining and auditing such accounts, and causing them to be properly stated, shall report the same for allowance, to the next term of the said orphans' court,—the executor, administrator, or guardian, giving at least forty days' notice of his intention of having such account presented to the said court for allowance at such term, by posting up notice thereof in three of the most public places in the county, or advertising the same for three weeks at least, in some public newspaper in this state, whichever, and as, the said judge shall have directed;<sup>1</sup> and the court, on due proof of notice, as aforesaid, and no exception being made to the report of the judge, may decree an allowance of the account as stated; but if any person or persons, interested in the settlement of the said account, shall, by himself or attorney, appear and make exception to the report, the court shall either proceed to hear the proofs and allegations, and correct or amend the mistakes or errors in the account as reported, or refer the same to auditors, who shall examine and restate the account, after hearing parties and witnesses, and make report to the next, or some subsequent term of the said court, for confirmation and allowance as aforesaid.

Auditing ac-  
counts.

1816—(7)  
Sec. 1.  
Executors,  
&c., refusing  
to settle their  
accounts,  
may be at-  
tached.

§ 28. Whenever any executor or executrix, administrator or administratrix, or guardian, shall be cited by the orphans' court, or the judge thereof, to appear and settle his accounts, as executor, administrator, or guardian, and shall fail to appear in obedience to the citation, the said orphans' court shall have power to issue an attachment against the person or persons so failing, in the same manner as the superior courts of this state might or could do, for disobedience to any order, judgment, or decree of said courts; and the said orphans' court shall have power to summon a jury of by-standers whenever it may be necessary, in order to carry into effect the power hereby granted.

Proceedings  
thereon.

1806—(1)  
Sec. 42.  
Action of ac-  
count may be  
brought by  
administrators  
against each  
other, and by  
executors in cer-  
tain cases.

§ 29. When two or more have letters of administration granted to them, of any intestate's estate, and one or more of them take all, or the greatest part of such estate, and refuse to pay the debts, or funeral expenses of such intestate, or refuse to account with the other administrator, in such case, the administrator so aggrieved, may have his action of account against the other administrator or administrators; and recover such proportionable share of such estate as shall belong to him; and any executor, being a residuary legatee, may have an action of account against his co-executor or co-executors, and recover his part of the estate, in the hands of such co-executor

Remedy by  
legatees.

<sup>1</sup> This notice is now required to be given by the judge.—See "Judiciary—County Court,"—§ 38.



or co-executors ; and any other residuary legatee may have the like remedy against the executors ; and any person having a legacy bequeathed in any last will and testament, may sue for and recover the same, at common law.

§ 30. Where any suit may have been commenced, on behalf of or against the personal representative or representatives of any testator or intestate, the same may be prosecuted by or against any person or persons, who may afterward succeed to the administration or executorship : such person or persons may, at any time, be made parties, on motion, and the cause shall proceed in the same manner, and judgment therein be in all respects as effectual, as if the same were prosecuted by or against the parties originally named. Where any personal representative or guardian shall be displaced, all moneys due to him or her in such right, by execution or otherwise, shall be paid to his or her successor.

1821—(4)  
Sec. 19.  
Suits may be continued in name of deceased executor, &c.

New parties made on motion.  
Payments to successor.

§ 31. When letters testamentary, probate of a will, or letters of administration on the estate of any testator, having no known place of residence in this state at the time of his or her death, shall have been duly obtained in any other state, territory, or country, and no personal representative of such testator or intestate shall have been duly appointed and qualified, in this state, the personal representative or representatives so appointed out of this state, may maintain any action, demand and receive any debt, and shall be entitled to all the rights and privileges, which he, she, or they could have done, or would have had, if duly appointed and qualified within this state : *Provided, always,* That before the rendition of judgment in any such action, there shall be produced in court where the same is pending, a copy of such letters testamentary, probate, or letters of administration, duly authenticated, according to the laws of the United States in such cases, and the certificate of the clerk of the county court of some county in this state, that such certificate has been duly recorded in his office ; and in default of such proof, the court may direct a non-suit to be entered ; *And provided, further,* That such foreign representative or representatives shall not be entitled to receive any money so recovered, or any money due to him, her, or them, in such rights, until the copy of the letters testamentary, probate, or letters of administration shall have been recorded as aforesaid, and there shall have been deposited, in the clerk's office of the county court, of the county where such judgment shall have been recovered, or of the county in which the debtor or debtors may reside, a bond, in such penalty as the judge of said county court may direct, payable to him and his successors in office, and with such obligors thereto as he may approve, conditioned that such representative or representatives shall faithfully administer, and apply according to law, all moneys and effects received by him, her, or them, in right of such testator or intestate, from any person or persons in this state, and on such bonds, suits may be brought and judgment recovered, as in other cases.

1b. Sec. 18.  
Executors appointed by other states may sue.

Evidence of their right.

To be recorded where judgment is recovered, and bond given before receiving proceeds.

§ 32. Executors, administrators, and guardians, shall not be compelled to plead specially to any action, or suit at law, brought against them in their said capacity, but may, under the general issue, give any special matter in evidence. (1)

1806—(1)  
Sec. 35.  
Special pleading not required of executors, &c.  
1826—(15)

§ 33. So much of the act entitled "An Act regulating judicial

(1) Held to extend to an action of covenant against an administrator, and that he may, under a general plea to the merits, give any special matter in evidence. *Martin, adm'r, v. White*, 1 *Stewt. Rep.* 473.



*Sec. 1.*  
Mispleading  
by executor  
or adminis-  
trator.

proceedings in certain cases, and for other purposes," passed December eighteenth, one thousand eight hundred and eleven, as provides that no executor or administrator shall be liable, out of their individual estate, for not pleading, mispleading, or false pleading in or to any action whatever, which may be brought against them as such, is hereby repealed.

*Ib. Sec. 2.*  
Securities  
not charge-  
able beyond  
assets for  
mispleading,  
&c.

§ 34. No security for an executor or administrator shall be chargeable beyond the assets of the testator or intestate, on account of any omission or mistake in pleading of the executor or administrator.

*Ib. Sec. 3.*  
Debtor ap-  
pointed exec-  
utor not re-  
leased.

§ 35. The appointment of a debtor, executor, shall in no case be deemed an extinguishment of the debt, unless it be so directed in the will.

1840—(22)  
*Sec. 1.*  
Judges of  
county  
courts to ap-  
point adm'r  
when no one  
will adminis-  
ter.

§ 36. It shall be the duty of the several judges of the county courts in this state, to appoint a suitable person in their respective counties, whose duty it shall be to take charge of the estates of deceased persons, in such cases only, where no other person will administer on the same; and said persons, so appointed, shall be required to discharge all the duties now required of administrators, and may be required to renew their bonds from time to time, and said persons shall be subject at all times to removal, for neglect of duty or malpractice in the discharge of their duties.

*Ib. Sec. 2.*  
Also, guardi-  
ans, under  
like circum-  
stances.

§ 37. The county courts shall be also authorized to appoint a suitable person in their respective counties, whose duty it shall be to act as guardians in all cases, similar to those provided for in the foregoing section, and under the like liabilities and restrictions.

1841—(12)  
*Sec. 1.*  
But may still  
grant admin-  
istration to  
sheriff, or  
coroner, *ex*  
*officio*.

§ 38. The aforesaid act shall not be so construed as to prevent the judges of the several county courts, from granting letters of administration on the estates of deceased persons, to the sheriff or coroner of the county, *ex officio*, under the provisions of the several laws existing previous to the passage of the act, of which this act is explanatory.

1841—(13)  
*Sec. 1.*  
When will  
directs estate  
to be kept to-  
gether, and  
not sold,  
court may  
allow ex'r or  
adm'r, with  
will annex-  
ed, annual  
salary.

§ 39. When, by the direction of any will, made or to be made, requiring that the estate devised, shall not be sold, but kept together for distribution at a future day, the judge of the county court of the proper county, shall have full power to allow, in lieu of the commissions now allowed, such annual compensation to the executor or administrator, with the will annexed, for his attention and services, as shall be reasonable, having regard to the amount of labor performed, the responsibility involved, and the value of the estate; and the decision of the judge of the county court, either in allowing or disallowing the said account, may be removed, for supervision, to the chancery court exercising jurisdiction over the said county, by petition of the aggrieved party, which petition shall be directed to, and the order of removal awarded by, the register of the said chancery court: *Provided*, That such petition, for supervision of the order, or decree of the county court, on the subject of said allowance, shall be filed within one year after it shall have been made; *And further*, That any minor heir, devisee, or legatee of said estate, may file such petition by his or her next friend.

1841—(14)  
*Sec. 1.*  
Ex'rs, adm'r's  
and guar-  
dians, may  
be sued in  
county  
where ap-  
pointed.

§ 40. Executors, administrators, and guardians, are hereby made liable to be sued in all cases, against them, in their representative character, in the courts of the county in which letters may have been granted to them, in the same manner as if they were resident freeholders of such county; and service of process, in all such suits, made in any county in this state, shall be as effectual as if made in the county in which the letters were taken out.



§ 41. When it shall be necessary for any executor, administrator, or guardian, to make annual or final settlements of his executorship, administration or guardianship, with the orphans' court having jurisdiction thereof, such executor, administrator, or guardian, shall file in the office of the clerk of said orphans' court, an account between himself and the estate of which he has charge, or the ward of whom he is guardian; in which account he shall charge himself with all wherewith he is by law chargeable, and credit himself by all to which he is of right entitled, as credits; and he shall file also, with said account, such vouchers and written evidence as he may rely on, to sustain the credit side of said account; whereupon, it shall be the duty of the judge of said orphans' court, to order publication to be made for at least forty days, (either by posting up written notices at the door of the court-house, and three or more other public places in the county, or by advertisement for three consecutive weeks in some newspaper, as such judge may direct) that all persons concerned in adverse interest, may appear at the time specified in said order, and contest said settlement if they think proper: *Provided*, That on application of either party, and for good cause shown, said settlement may be continued in the same way, and under the same rules, as far as practicable, that causes are continued in other courts of this state.

1843—(15)  
Sec. 1.  
On annual settlement, ex'r, &c. to file in clerk's office, account between himself and estate.

Judge to order publication, that persons concerned may contest.

§ 42. At the time appointed, in said order of publication, for said settlement to be made, or so soon thereafter as the same is regularly reached, the said judge shall audit and examine said account and vouchers, and, after hearing the exceptions and objections to the same, (if any are made,) and the evidence adduced, shall proceed to state the same, and render a decree thereon, which decree shall, in all respects, have the force and effect of a judgment at common law.

*Ib.* Sec. 2.  
Judge's duties in regard to accounts, &c.

§ 43. To the end that said judge may be informed, in whose favor such decree shall be rendered, on such final or annual settlement, and may appoint guardians *ad litem* of the minor heirs and legatees of said estates, (if necessary) every executor or administrator, when he files his vouchers and account as aforesaid, for settlement, shall, at the same time, file with the same, on oath, a statement containing a list of the heirs and legatees of said estate, specifying which are minors, *femes covert*, and *non compos mentis*; and this duty shall be deemed official, and the executor or administrator, and his sureties, shall be liable on his official bond, as such, for all damages arising from a neglect of the same.

*Ib.* Sec. 3.  
Ex'r, &c. shall file, on oath, a list of heirs and legatees.

His liability on failure.

§ 44. It shall be the duty of the judge of the orphans' court, granting letters of administration or letters testamentary on the estate of any deceased person, to take into the estimated value of the estate, all such real estate as the said decedent may have died seized and possessed of, and shall require of said administrator or executor, such bond and security, and under such penalties, as are now required by law of administrators or executors.

1843—(16)  
Sec. 1.  
Judge granting letters of administration, &c. to include all real property in estimate of estate.

§ 45. In all cases hereafter, when the orphans' court shall order or decree the sale of any lands belonging to the estate of any deceased person, it shall be the duty of the administrator or executor of said estate, to advertise and sell said lands on the terms and in the manner set forth in said order or decree, after giving the notice now prescribed by law in such cases, and shall report to said court within the time prescribed in said order or decree, an account of the sales thereof.

*Ib.* Sec. 2.  
On order of sale of lands, ex'r, &c. to advertise and sell.

§ 46. On a confirmation of such sale by the judge of the orphans' court, the executor or administrator shall be and is hereby authorized

*Ib.* Sec. 3.  
On confirmation of sale



by court, executor &c. to give deed to purchaser.

and required, to convey such real estate to the purchaser, by deed, which shall vest in the purchaser such title as his testator or intestate had in such real estate; and the court may require the purchaser to secure the payment of the purchase money, by deed of trust or mortgage on such real estate.

1843—(17)

Sec. 1.  
When persons to whom letters testamentary, &c., are granted, removes beyond jurisdiction of court, notice to be given, &c.

§ 47. Whenever any person, to whom letters testamentary, of administration, or of guardianship, shall have been granted by any orphans' court of this state, shall have removed beyond the jurisdiction of the court granting said letters, without having settled his accounts as such executor, administrator, or guardian, the judge of said court may, upon the application of any person interested, cause notice to be given by advertisement in some newspaper published in this state, requiring said executor, administrator, or guardian, to file his accounts and vouchers for settlement, at a regular term of said court, to be holden not less than three months from the date of said notice; and if the said executor, administrator, or guardian, shall fail to appear and file his accounts and vouchers for settlement, it shall be the duty of said judge of said court, to state an account against said executor, administrator, or guardian, charging him with such amounts as shall appear, upon the best information, to have come to his hands, as such executor, administrator, or guardian, and proceed to settle and decree upon the same, as now required by law: *Provided*, That if said executor, administrator, or guardian, shall appear and file his account and vouchers for settlement, and pay such costs as may have accrued in consequence of his default, at any time before the final hearing of the account stated, as aforesaid, and decree thereon, it shall be the duty of said court to set aside the proceedings aforesaid, and to audit and state the account filed by said executor, administrator or guardian, in manner and form now required by law.

Duty of judge on failure of executor, &c.

Proviso.

1b. Sec. 2.  
Duty of judge on failure of executor, &c. to obey citation

§ 48. Whenever an executor, administrator, or guardian, residing within this state, who shall have been called to appear and file his account and vouchers for settlement, shall fail to obey such citation, the judge of the court, from which such citation was issued, may proceed to state an account against such executor, administrator or guardian, charging him with such amounts as shall appear to have come to his hands; and shall cause notice to be given to said executor, administrator, or guardian, that, unless he appear at the next term of the orphans' court thereafter, and file his account and vouchers for settlement, the account so stated, as aforesaid, will be reported for allowance, and settled as now required by law: *Provided, however*, That if said executor, administrator, or guardian, shall, at any time before the final decree upon the account stated, as aforesaid, appear and file his account and vouchers for settlement, and shall pay such costs as may have accrued, it shall be the duty of the court to set aside the proceedings had in relation to such stated account, and to proceed to settle with said executor, administrator, or guardian, according to the laws now in force.

Proviso.

NOTE.—Property not devised or bequeathed by will, is required to be administered, as in case of intestacy.—See "Wills,"—§ 7. When lands are directed by will to be sold, and no one is appointed by the testator for that purpose, or being appointed, refuses to act, the sale and conveyance may be made by the acting executor.—See "Wills,"—§ 14.



## FEES.

§ 1. The clerks, sheriffs, and other officers, and persons hereafter named, shall be entitled to demand and receive for the services hereinafter mentioned, the fees thereto respectively annexed, and no more, to be paid, taxed, and collected, in manner hereinafter directed, that is to say :

1812—(20)  
Sec. 10.

## TO CLERKS OF CIRCUIT COURTS.

|                                                                                                                           |                  |                         |
|---------------------------------------------------------------------------------------------------------------------------|------------------|-------------------------|
| For every writ, other than those hereinafter particularly specified, with the endorsement,                                | \$— 50           | Clerk of circuit court. |
| A copy thereof,                                                                                                           | 18 $\frac{3}{4}$ |                         |
| Entering a sheriff's return, or a copy thereof,                                                                           | 12 $\frac{1}{2}$ |                         |
| Copy of a bail bond,                                                                                                      | 25               |                         |
| Docketing every cause, to be charged but once,                                                                            | 12 $\frac{1}{2}$ |                         |
| Entering the appearance of any party, by attorney or personally, to be charged but once,                                  | 12 $\frac{1}{2}$ |                         |
| For entering special bail in court,                                                                                       | 18 $\frac{3}{4}$ |                         |
| For a bail piece, if required,                                                                                            | 12 $\frac{1}{2}$ |                         |
| For filing declaration, plea, or demurrer, or other pleadings, for each,                                                  | 6 $\frac{1}{4}$  |                         |
| For entering every rule on the rule docket, at the request of the party, but not otherwise,                               | 6 $\frac{1}{4}$  |                         |
| For every order made in court, not otherwise provided for,                                                                | 25               |                         |
| For a copy thereof, if required,                                                                                          | 18 $\frac{3}{4}$ |                         |
| For every trial, swearing jury and witnesses, and recording a general verdict,                                            | 62 $\frac{1}{2}$ |                         |
| For every trial, where there is a special verdict, case agreed, or points reserved, and swearing jury and witnesses,      | 75               |                         |
| For entering up judgment or a copy thereof,                                                                               | 18 $\frac{3}{4}$ |                         |
| For every <i>scire facias</i> , and recording the return,                                                                 | 50               |                         |
| For every execution <i>fi. fa.</i> or <i>ca. sa.</i> , and recording the return,                                          | 50               |                         |
| For every writ of <i>elegit</i> ,                                                                                         | 30               |                         |
| For recording the return thereof, for every hundred words,                                                                | 15               |                         |
| For a copy of an execution and return,                                                                                    | 25               |                         |
| For recording the award of arbitrators, viewers, auditors, &c. for every hundred words,                                   | 15               |                         |
| For every order to witness for attendance, and copy thereof, to be charged to the party for whom he is summoned,          | 25               |                         |
| For issuing an attachment thereon, for non-payment,                                                                       | 18 $\frac{3}{4}$ |                         |
| For taking bonds for <i>certiorari</i> , <i>supersedeas</i> , or writ of error,                                           | 25               |                         |
| For a copy thereof, if required,                                                                                          | 20               |                         |
| For filing such bond,                                                                                                     | 10               |                         |
| For recording the acknowledgement of satisfaction of a judgment,                                                          | 12 $\frac{1}{2}$ |                         |
| For a summons for witness or witnesses,                                                                                   | 25               |                         |
| For administering an oath in court, not relating to the trial of a suit there depending, and certifying the same,         | 25               |                         |
| For the copy of an account, for every hundred words,                                                                      | 12 $\frac{1}{2}$ |                         |
| For filing every attachment granted by a judge or justice,                                                                | 10               |                         |
| For each summons for garnishee or garnishees, on such attachment,                                                         | 18 $\frac{3}{4}$ |                         |
| For swearing and taking the examination of a garnishee or garnishees, or any attachment, and entering the same on record, | 25               |                         |



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| For an order to advertise, or order of survey and copy thereof,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 37½   |
| For recording a connexion of surveys in a surveyor's report, for every survey laid down in such connexion, with its references,                                                                                                                                                                                                                                                                                                                                                                                                                              | 25    |
| For a copy thereof, each,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 12½   |
| For recording the report of a surveyor, for every hundred words,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 12½   |
| For a copy thereof, for every hundred words,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 12½   |
| For a commission to take depositions,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 50    |
| For a copy of interrogatories to accompany such petition, for every hundred words,                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 12½   |
| For filing the depositions of each party,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 12½   |
| For every writ <i>de idiota inquirenda</i> , or writ of lunacy,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 25    |
| For recording the return, and inquest thereon, for every hundred words,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 15    |
| For every writ of <i>ad quod damnum</i> , or other writ in the nature thereof,                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 50    |
| For recording the return, and inquest thereon, for every hundred words,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 15    |
| For every writ of <i>certiorari</i> , writ of error, prohibition, <i>mandamus</i> , or any other writ in the nature thereof,                                                                                                                                                                                                                                                                                                                                                                                                                                 | 50    |
| For filing the same with the return,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 10    |
| For making a complete record of any cause, after final judgment, for every hundred words, or copy of the same,                                                                                                                                                                                                                                                                                                                                                                                                                                               | 12½   |
| For copy of any paper or record, not herein otherwise provided for, for every hundred words,                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 12½   |
| For a search out of term time, for any thing above a year's standing, where no copy is required, and for reading the same,                                                                                                                                                                                                                                                                                                                                                                                                                                   | 12½   |
| For every necessary certificate to which the seal of office is required, and affixing seal,                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 50    |
| Taking any and every bond,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 50    |
| For every necessary certificate not otherwise provided for, or copy thereof,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 12½   |
| For every order of continuance in court,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 6¼    |
| For entering finding of indictment, or filing information,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 25    |
| For arraigning prisoner, and entering plea,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 50    |
| For taking recognizance,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 50    |
| For swearing and entering grand juries, issuing summonses on presentments, and informations, and for witnesses, swearing juries, and witness on presentments, and indictment, where the party is not convicted, taking recognizance of prosecutions, witnesses, and defendants, certifying allowances to the sheriffs, constables, and guards, and for all public services not herein otherwise provided for, to be paid from the public treasury on certificates of the court, to which such clerk shall belong, a sum per annum not exceeding <sup>1</sup> | 50 00 |

<sup>1</sup> For fees in Bank cases, see "Bank of the State and Branches—General Provisions," § 85. For fees for all extra services,—see § 5 of this title.



## TO THE REGISTERS IN CHANCERY.\*

[a 1843—(21)  
Sec. 4.]  
Registers in  
chancery.

Registers in chancery shall receive the following fees, and  
none other:

|                                                                                                                                                                                                                                                                                                     |      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| For each subpoena,                                                                                                                                                                                                                                                                                  | 25   |
| For entering each return,                                                                                                                                                                                                                                                                           | 10   |
| For entering each decree,                                                                                                                                                                                                                                                                           | 20   |
| For each copy of a bill or answer, for each hundred words,                                                                                                                                                                                                                                          | 10   |
| For each report,                                                                                                                                                                                                                                                                                    | 1 50 |
| For making a complete record, for every hundred words,                                                                                                                                                                                                                                              | 10   |
| For each execution,                                                                                                                                                                                                                                                                                 | 25   |
| Commissions on sales—for the first hundred dollars, two per cent.; for all over one hundred, and under one thousand dollars, one per cent.; for all sums over one thousand dollars, one half per cent.; which commissions shall be calculated upon the amount for which the property shall be sold. |      |
| For making a deed to property sold,                                                                                                                                                                                                                                                                 | 1 00 |
| For each bond taken and approved,                                                                                                                                                                                                                                                                   | 25   |
| For each certificate and official seal,                                                                                                                                                                                                                                                             | 20   |
| For every paper or record, not included in the above, for every hundred words copied or recorded,                                                                                                                                                                                                   | 10   |

## TO THE CLERKS OF THE COUNTY COURTS.

|                                                                                                                                                                          |      |                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|----------------------------------|
| For the like services by them performed, the same fees as are herein allowed to the clerks of the circuit courts.                                                        |      | Clerk of the<br>county<br>court. |
| For recording the probate of any will, or testament, and for letters testamentary thereon,                                                                               | 1 00 |                                  |
| For recording a will, testament, or codicil, for every hundred words,                                                                                                    | 12½  |                                  |
| For administering oath to executors, or administrators, and taking bond, and recording the same,                                                                         | 1 00 |                                  |
| For letters of administration, and order granting the same,                                                                                                              | 1 00 |                                  |
| For order appointing appraisers of an estate, and for copy,                                                                                                              | 25   |                                  |
| For recording an inventory, appraisement, for executors', administrators', or guardians' accounts, for every hundred words,                                              | 12½  |                                  |
| For order for tavern license, and taking bond,                                                                                                                           | 50   |                                  |
| For a copy of tavern rates,                                                                                                                                              | 25   |                                  |
| *For issuing a marriage license and taking bond,                                                                                                                         | 1 00 | [a 1843—(21)<br>Sec. 9.]         |
| For recording certificate of marriage, to be paid when license is issued,                                                                                                | 50   |                                  |
| For recording certificate of estray, and copy for advertising at the court-house,                                                                                        | 50   |                                  |
| For an order binding out apprentice, and copy of the same,                                                                                                               | 50   |                                  |
| For recording indenture of apprenticeship,                                                                                                                               | 50   |                                  |
| For filing appeal from a justice of the peace, docketing same, and all services incident thereto in court,                                                               | 50   |                                  |
| For recording a deed of bargain and sale of lands, slaves, or other personal estate, whether by mortgage or not, and every certificate thereon, for every hundred words, | 12½  |                                  |
| For issuing a commission for taking the privy examination of a <i>feme covert</i> , &c. to a deed for lands,                                                             | 50   |                                  |
| For recording the same, with the return thereof, for every hundred words,                                                                                                | 12½  |                                  |



|                                                                                                                                                                                                                                                                                                                                                                                                                                                             |       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| For recording a letter of attorney with the certificate thereon, or for a copy thereof, for every hundred words,                                                                                                                                                                                                                                                                                                                                            | 12½   |
| For recording any bond, note, articles of agreement, or any other writing not herein provided for, for every hundred words,                                                                                                                                                                                                                                                                                                                                 | 12½   |
| For a copy thereof, for every hundred words,                                                                                                                                                                                                                                                                                                                                                                                                                | 12½   |
| For entering and copying orders for viewing and opening roads, for orders appointing overseers of roads, and copying the same, for orders for appointing overseers of the poor, and copying the same, and for all other public services for which no particular fee is herein specified or allowed, to be paid from the public treasury, out of the county funds, on a certificate of the court to which the clerk belongs, a sum not exceeding, per annum, | 25 00 |

*Provided*, That no fee shall be allowed for issuing *scire facias* against defaulting jurors, where they may be excused by the court.

[a 1832—(37)  
Sec. 1.]

Clerks not to demand fees from jurors for certifying attendance.

[b 1b. Sec. 2.]  
Nor for witnesses.

Fee to be taxed in bill of costs.

<sup>a</sup>It shall not be lawful for the clerks of the circuit or county courts to demand or receive any fees for swearing and certifying the attendance of any jurors in their respective courts.

<sup>b</sup>Said clerks shall not be entitled to demand a fee from any witness for swearing, or certifying his attendance as a witness, but the fee for such service shall be taxed in the bill of costs, and collected as the other costs may be.<sup>1</sup>

#### TO THE CLERK OF THE SUPREME COURT.

[c 1816—(8)  
Sec. 1.]

Clerk of the supreme court.

[d 1843—(21)  
Sec. 1.]

<sup>c</sup>The clerk of the supreme court of errors and appeals shall be entitled to double the fees allowed by law to the clerks of the circuit courts, for like services, <sup>d</sup>deducting therefrom twenty-five per cent.

#### TO THE SHERIFFS.

Sheriff.

|                                                                                   |      |
|-----------------------------------------------------------------------------------|------|
| For levying an attachment on the estate of an absconded debtor,                   | 1 50 |
| For summoning garnishee,                                                          | 50   |
| For selling property attached, the same as for selling on a <i>fiery facias</i> . |      |
| For serving <i>capias ad respondendum</i> , or other mesne process,               | 1 00 |
| For returning writ in sheriff's office,                                           | 12½  |
| For returning <i>capias</i> , or other mesne process,                             | 12½  |
| For leaving copy of writ with defendant,                                          | 25   |
| For taking bail bond, assignment thereof, and returning the same,                 | 50   |
| For summoning each witness,                                                       | 50   |
| For empanneling a jury in each cause, where a jury is sworn,                      | 25   |
| For executing a <i>habere facias possessionem</i> ,                               | 2 00 |
| For making a deed to purchaser of real estate, sold or executed,                  | 2 00 |
| For removing a prisoner, for every mile going and returning,                      | 5    |
| For every day's attendance with such prisoner on the judge, in vacation,          | 2 00 |
| For committing a prisoner to jail, or releasement,                                | 50   |

<sup>1</sup> See "Bastardy," § 11, "Conveyances," § 14, and "Bank of the State and Branches—General Provisions," § 85. For fees for all extra services,—see *post*, § 5.



|                                                                                                                                                                                                                                                                                                                                                   |       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| For victualing a prisoner per day, <sup>1</sup>                                                                                                                                                                                                                                                                                                   | 40    |
| For serving a declaration in ejectment, and copy thereof, on each tenant in possession,                                                                                                                                                                                                                                                           | 1 00  |
| For levying <i>feri facias</i> , and making money thereon, for the first hundred dollars, five per cent.; for all sums above one hundred dollars and not exceeding two hundred dollars, four per cent.; for every hundred dollars over, in said execution, two and one-half per cent.                                                             |       |
| For levying <i>feri facias</i> where sale is stayed by injunction, or <i>supersedeas</i> , or not sold for want of bidders, or other cause, one-half of the above commissions.                                                                                                                                                                    |       |
| For every <i>ca. sa.</i> on each defendant, and commitment,                                                                                                                                                                                                                                                                                       | 1 00  |
| For making money on <i>ca. sa.</i> same commissions as are allowed on <i>feri facias</i> .                                                                                                                                                                                                                                                        |       |
| For executing a condemned person, and all incidents thereto,                                                                                                                                                                                                                                                                                      | 10 00 |
| For putting a person in the pillory or stocks, by order of court,                                                                                                                                                                                                                                                                                 | 1 00  |
| For whipping a free person by order of court,                                                                                                                                                                                                                                                                                                     | 2 00  |
| For whipping a slave by order of court, to be paid by the owner,                                                                                                                                                                                                                                                                                  | 1 00  |
| For summoning a jury upon any inquisition in the county, and attending on said jury and taking inquest, per day,                                                                                                                                                                                                                                  | 2 00  |
| For serving subpoena in chancery, for each defendant,                                                                                                                                                                                                                                                                                             | 50    |
| Returning same,                                                                                                                                                                                                                                                                                                                                   | 12½   |
| For serving <i>scire facias</i> on each defendant,                                                                                                                                                                                                                                                                                                | 50    |
| For serving every person with a summons not herein provided for,                                                                                                                                                                                                                                                                                  | 50    |
| For serving an attachment for contempt, and returning same,                                                                                                                                                                                                                                                                                       | 1 00  |
| For victualing a runaway slave, in jail, per day, <sup>1</sup>                                                                                                                                                                                                                                                                                    | 40    |
| For advertising such slave,                                                                                                                                                                                                                                                                                                                       | 1 00  |
| For advertising and selling an estray,                                                                                                                                                                                                                                                                                                            | 1 00  |
| For taking a bond, in virtue of his office, other than is herein provided for,                                                                                                                                                                                                                                                                    | 50    |
| For taking bonds of every kind,                                                                                                                                                                                                                                                                                                                   | 50    |
| For empanneling grand juries, advertising and attending elections, serving all public orders, of all courts in his county, and for all other public services, not herein otherwise particularly provided for, a sum not exceeding, per annum, to be allowed and certified by the circuit court, and paid out of the public treasury, <sup>a</sup> | 50 00 |
| <i>Provided</i> , That no fee shall be allowed for <i>scire facias</i> against defaulting jurors, where the same may be excused by the court.                                                                                                                                                                                                     |       |

<sup>a</sup>See post § 5.

## TO THE CORONER.

|                                                                                                |       |          |
|------------------------------------------------------------------------------------------------|-------|----------|
| For taking an inquisition on a dead body,                                                      | 10 00 | Coroner. |
| For all services done by him, the same fees as are allowed to sheriffs for similar services,   |       |          |
| The fees allowed to coroners for holding inquests, shall be paid out of the county treasuries. |       |          |

[b 1833—(5)  
Sec. 36.]

<sup>1</sup>For victualing a slave, 25 cents per day (by act of 1833.) See "Prisons and Prisoners,"—§ 17.



## TO THE JUDGE OF THE COUNTY COURT.

Judge of  
county court.  
[s 1843—(21)  
Sec. 3.]

<sup>a</sup>Judges of the county courts shall, in place of the fees now allowed by law, receive the following fees:

|                                                                                                                                                                                                                                                                                                     |      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| For granting letters testamentary, or of guardianship, or of administration,                                                                                                                                                                                                                        | 1 50 |
| For any order, necessary in any case over which said judges have jurisdiction,                                                                                                                                                                                                                      | 50   |
| On judgments and decrees                                                                                                                                                                                                                                                                            | 2 00 |
| For examining, stating and reporting the accounts of an executor, administrator, or guardian, (which shall include compensation for examining vouchers and performing every service connected with the partial or final settlement of an estate, except the grant of letters and necessary orders,) | 2 00 |
| For every day employed in the settlement of an estate,                                                                                                                                                                                                                                              | 1 50 |

[s 1843—(21)  
Sec. 7.]

<sup>b</sup>The judges of the several county courts shall demand and receive a fee for but one order, in the grant of letters testamentary, of administration, or of guardianship; and a fee for but one decree, in the settlement of insolvent or other estates.

All of which fees shall be taxed in the bill of costs, and collected by the clerks, and paid over to the judges.<sup>1</sup>

## TO NOTARIES PUBLIC.

[s 1840—(32)  
Sec. 1.]

|                                                                  |      |
|------------------------------------------------------------------|------|
| *For protesting any bill, registering and seal,                  | 1 00 |
| For attesting letters of attorney, and seal,                     | 50   |
| For notarial affidavit to an account or other writing, and seal, | 50   |
| For registering a foreign bill protested, with certificates,     | 75   |

[s 1840—(32)  
Sec. 1.]

|                                                                                                             |      |
|-------------------------------------------------------------------------------------------------------------|------|
| *For registering a protest of a bill of exchange, or note, for non-payment or non-acceptance,               | 25   |
| For every oath or affirmation, and seal,                                                                    | 50   |
| For a notarial procuration, and seal,                                                                       | 1 00 |
| For certifying sales at auction, and seal,                                                                  | 75   |
| For taking proof of debts, to be sent abroad, or proof and acknowledgment of letters of attorney, and seal, | 75   |
| For protest in insurance cases, and seal,                                                                   | 1 00 |

## TO COUNSELLORS AND ATTORNEYS AT LAW.

|                                                                                                          |       |
|----------------------------------------------------------------------------------------------------------|-------|
| For prosecuting or defending a suit in the county court,                                                 | 4 00  |
| For like services in the superior courts,                                                                | 6 00  |
| For prosecuting or defending a suit in chancery,                                                         | 15 00 |
| For prosecuting or defending a mixed or real action, where the title or bounds of lands are in question, | 20 00 |

[s 1814—(4)  
Sec. 2.]

\*For all sums under two hundred dollars, (in the circuit court) the attorney's fee shall be the same as in the county court.

[s 1830—(4)  
Sec. 4.]

[s 1815—(12)  
Sec. 4.]

Successful party enti-

\*In all cases decided in the supreme court, the successful party shall be entitled to the same fee which is now allowed in chancery causes, and the party prevailing in any suit which may be brought in any of the courts in this state, shall be considered as entitled to

<sup>1</sup> See "Bastardy," § 11. "Conveyances," § 11.



the tax-fee allowed the attorney, and recover the same against the party cast in the suit.<sup>1</sup>

to be taxed to fee.

### TO THE ATTORNEY-GENERAL AND SOLICITORS<sup>2</sup>.

The attorney-general and the several solicitors, shall receive the same fees for prosecuting to conviction, any slaves charged with capital offences, as now allowed by law in other cases, and the same shall be paid out of the fund provided for the payment of slaves punished capitally: *Provided*, That no fee for any one conviction, shall exceed ten dollars; and no fee shall be allowed by the comptroller, unless the same is certified to be correct, by the judge who may preside at the trial.

1828—(33)

Sec. 1.  
Fees for prosecuting to conviction slave charged with capital offence.

### TAXATION AND COLLECTION.

§ 2. The fees herein allowed, shall be taxed and allowed in the bill of costs, in all suits where the services, respectively, shall have been rendered, but not more than one copy of any matter shall be allowed in the bill of costs, neither shall the clerk tax more than one attorney's fee in the bill of costs, although more attorneys than one may have been employed on the same side in the suit; and if any plaintiff or defendant, his or her attorney, shall take out copies of his or her own declaration or pleadings, or of his or her own papers in any cause, or of any common order made in such cause, the charge of such copies shall not be allowed in the bill of costs, although such party recovers.

ib. Sec. 11.  
Fees to be taxed in the bill of costs.

§ 3. And to the end that all persons chargeable with any of the fees aforesaid, may certainly know what the same was charged, every clerk and sheriff shall keep a fee-book, which in case of the clerk, shall be considered, and is hereby declared to be, one of the books belonging to his office, and shall enter therein, in a regular account, to be opened for that purpose, every fee for each and every distinct service by him rendered, charging for every particular article in words at full length, in the same manner as the fees aforesaid; and the said fee-book shall be free for the inspection of every person wishing to see the account of fees charged against him therein; and there shall be a regular index made to such book, pointing to the folio, in which the respective accounts are contained; and no clerk or sheriff shall be allowed to take or demand any fee for any service by him performed, which shall not be justified by the charge made, and entered in his fee-book as aforesaid.

ib. Sec. 12.  
Clerks and sheriffs to keep fee-book.

§ 4. None of the fees hereinbefore mentioned, shall be payable by any person whatsoever, until there be produced, or ready to be produced unto the person owing or chargeable with the same, a bill, or account in writing, containing the particulars of such fees, signed by the clerk or officer to whom such fee shall be due, or by whom the same is chargeable, respectively; in which bill or account, shall be expressed, in words at length, as the fees aforesaid are allowed by this act, every fee for which money shall be demanded; and in

ib. Sec. 13.  
Bill of fees to be produced.

<sup>1</sup> For tax-fee of Bank Attorneys,—See "Bank of the State and Branches—General Provisions, § 90.

<sup>2</sup> See "Attorney-General and Solicitors."



all cases where any person shall be presented or indicted by the grand jury, and shall be discharged from such presentment or indictment, neither the clerks nor sheriffs shall charge fees for the same, but it shall be deemed to be included in the public services; but if the party or parties so presented or indicted, shall be convicted, the clerk and sheriff shall charge him, her, or them, with all fees accruing thereon.

1843—(21)

Sec. 2.

Fees of clerks and sheriffs for extra services.

*Ib.* Sec. 5. Commissions not to be charged on executions, when.

§ 5. The clerks of the circuit and county courts, and sheriffs, for all extra services, shall receive the sum of fifty dollars, in lieu of the sum now allowed, to be paid as heretofore.

§ 6. No sheriff or coroner shall charge commissions upon any execution, unless such execution shall have been actually levied upon the property of the defendant, and the money made thereon, or be stayed by the order of, and the money paid to, the plaintiff; and no commissions shall be charged, but upon the amount of money actually collected. And where, after a levy of execution upon the property of the defendant, the proceedings upon such levy are stayed by any process of the law, the sheriff or coroner shall not be entitled to charge half commissions.

*Ib.* Sec. 6. No service, no fee.

§ 7. No officer entitled to fees under this act, shall be entitled to receive or demand such fees, or any of them, unless the duty or service for which granted, is first performed.

*Ib.* Sec. 8. All officers to make out bill of fees & costs, and no fee for taxing costs.

§ 8. The clerks of the circuit courts, clerks of the county courts, registers in chancery, and all other officers entitled to fees or costs under this act, or any law now in force, and not hereby repealed, shall, on demand, make out a bill of fees and costs, stating each item distinctly, and no fee shall hereafter be charged by, or allowed to any of said officers for taxing costs, or any copy thereof.

*Ib.* Sec. 11. Penalty for demanding extra fees.

§ 9. If any of the officers, herein named, shall presume to demand and receive any other or higher fees than are prescribed by this act, he shall be liable in damages to the party aggrieved, for four-fold the fees so unlawfully demanded and received, to be recovered in any court of competent jurisdiction; and moreover, shall be liable to indictment, and on conviction, may be fined in any sum not exceeding one hundred dollars, for each and every case, at the discretion of the jury trying the same.<sup>1</sup>

1807—(14)

Sec. 8.

Clerks to issue executions for fees, when not paid.

§ 10. It shall be lawful for the clerks of the several courts within this state, when suits are determined and fees not paid by the party from whom they are due, to make out executions, directed to the sheriff of the county where the party resides, and it shall be lawful for the registers of the several orphans' courts, to make out executions, in like manner, for the fees that may become due the officers of said courts, by virtue of this act directed to the sheriff of the proper county; and the said sheriff shall levy the same, by virtue of said execution as in other cases, and to the said execution shall be annexed a copy of the bill of costs, of the fees on which such execution shall issue, written in words at length, without any abbreviation whatever; and all executions issuing without the copy of such bill of costs, shall be deemed illegal, and no sheriff shall serve or execute the same.

Bill of fees to be annexed to execution.

1823—(30)

Sec. 1.

No commissions allowed for collecting costs.

§ 11. It shall not be lawful for any constable, sheriff, or coroner, in this state, to calculate, exact and collect, commissions on the costs taxed on any execution or executions put in their hands; but shall only demand and collect the commissions allowed by law on the principal, damages, and interest.

<sup>1</sup> See "Penal Code," chap. 5, § 26.



§ 12. The law of costs shall be deemed and held as a penal law, *Ib. Sec. 3.* and no fees shall be taken, but in cases expressly provided for by *Law of costs, penal.*

§ 13. It shall be the duty of the several clerks of the circuit <sup>1829—(9)</sup> and county courts of this state, to have and keep posted up, in a <sup>Sec. 1.</sup> conspicuous place in their respective offices, a complete list of all <sup>Clerks to post up in their offices a list of clerks' and sheriffs' fees.</sup> the fees allowed by law to the clerks of the circuit and county courts of this state, and to the sheriffs; and shall also keep a copy ready to be produced on the application of any person who may wish to see the same; and on failing to comply with the provisions of this act, such clerk or clerks, so failing, shall not be authorized to receive or collect any fees for any services rendered during the time of such failure.

TO JUSTICES OF THE PEACE.

§ 14. Justices of the peace shall be entitled to demand the following fees for their services, and not other or more, to wit: <sup>1829—(2)</sup> *Sec. 1.* <sup>Justices' fees</sup>

|                                                                                                  |        |
|--------------------------------------------------------------------------------------------------|--------|
| For celebrating the rights of matrimony,                                                         | \$2 00 |
| For warrant to apprehend a person or persons charged with an offence against the state,          | 37½    |
| For a search or peace warrant,                                                                   | 25     |
| For a warrant in civil cases, and proceedings thereon to judgment,                               | 37½    |
| For a warrant in <i>qui tam</i> cases, and proceedings thereon to judgment,                      | 50     |
| For every subpoena for witness or witnesses,                                                     | 12½    |
| For each execution, and taxing costs thereon,                                                    | 37½    |
| For each attachment, taking bond and affidavit,                                                  | 1 00   |
| For summons for garnishee and taking examination,                                                | 37½    |
| For judgment and order of sale on attachment,                                                    | 25     |
| For hue and cry,                                                                                 | 25     |
| For each appeal, including bond and certifying proceedings,                                      | 75     |
| For taking each stay or other bond,                                                              | 25     |
| For administering an oath, and certifying the same,                                              | 12½    |
| For taking depositions by virtue of a <i>dedimus potestatem</i> , for every hundred words,       | 10     |
| For every necessary certificate, not otherwise provided for by law,                              | 25     |
| For docketing each cause,                                                                        | 6¼     |
| For each judgment on a forthcoming bond, or summary proceeding without warrant,                  | 25     |
| For a transcript of proceedings when required, other than those sent up on appeal,               | 25     |
| For issuing a <i>venire facias</i> , to try the right of property,                               | 50     |
| For attending on the trial of the right of property,                                             | 50     |
| For appraisement and certificate of appraisement of estray or estrays,                           | 50     |
| For each notice or <i>scire facias</i> , or summons in the nature thereof,                       | 25     |
| For making a return to a <i>certiorari</i> (other than in cases of forcible entry and detainer,) | 50     |

§ 15. Justices of the peace shall be entitled to demand and receive *Ib. Sec. 2.* the following fees, in cases of forcible entry and detainer, forcible <sup>Justices' fees in forcible entry and detainer.</sup> detainer, and unlawful detainer, viz:



|                |                                                                                                                                                                           |      |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Justices' fees | For every summons,                                                                                                                                                        | 30   |
|                | For every <i>venire facias</i> ,                                                                                                                                          | 40   |
|                | For entering copies of complaint, summons, <i>venire facias</i> , and evidence offered and rejected, and received when objected to, being a complete record of the cause, | 2 00 |
|                | For subpoena for witness,                                                                                                                                                 | 12   |
|                | For swearing the jury,                                                                                                                                                    | 20   |
|                | For administering every oath or affirmation,                                                                                                                              | 6    |
|                | For entering every verdict,                                                                                                                                               | 12   |
|                | For entering every judgment,                                                                                                                                              | 12   |
|                | For presiding on every trial,                                                                                                                                             | 2 00 |
|                | For issuing a writ of restitution,                                                                                                                                        | 25   |
|                | For return to every <i>certiorari</i> ,                                                                                                                                   | 1 00 |

## TO CONSTABLES.

*Ib. Sec. 3.*  
Constables' fees.

§ 16. It shall not be lawful for constables to demand or receive any other fees, for their services, than such as are hereinafter mentioned, viz :

|                                                                                                                                                                                                                   |      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| For serving a warrant in civil cases,                                                                                                                                                                             | 50   |
| For summoning each witness,                                                                                                                                                                                       | 25   |
| For serving search, peace, or other state warrant,                                                                                                                                                                | 50   |
| For conveying a criminal to jail per mile,                                                                                                                                                                        | 10   |
| For levying an attachment,                                                                                                                                                                                        | 75   |
| For levying an execution,                                                                                                                                                                                         | 50   |
| For making the money on each execution,                                                                                                                                                                           | 50   |
| For conveying a debtor to jail,                                                                                                                                                                                   | 50   |
| For whipping a slave (to be paid by the owner) by order of a justice of the peace,                                                                                                                                | 1 00 |
| For summoning a coroner's inquest, (to be paid by the county,)                                                                                                                                                    | 2 00 |
| For attending court, when summoned by the sheriff (to be paid by the county) per day,                                                                                                                             | 1 50 |
| For serving each notice, on each person therein named,                                                                                                                                                            | 25   |
| For serving <i>scire facias</i> on each person therein named,                                                                                                                                                     | 50   |
| For taking bail bond, bond for the forthcoming of property, or other bond required by law,                                                                                                                        | 50   |
| For keeping property levied on, such sum as the justice believes just and reasonable, out of the money in the hands of said constables, arising from a sale of said property, or received by reason of said levy. |      |

*Ib. Sec. 4.*  
Other services, *ex officio*.

§ 17. Any other service performed by any justice or constable, for which no fee is allowed in this act, shall be considered *ex officio*, and no fee allowed, had, demanded, or received for the same.

## TO COUNTY SURVEYORS.

1834—(15)  
Sec. 1.  
County surveyors' fees.

§ 18. The following compensation shall be allowed and taken by county surveyors, and no more for services rendered by virtue of their offices, to wit:

|                                                                                       |      |
|---------------------------------------------------------------------------------------|------|
| For every single plat and calculating contents, with certificate of contents annexed, | 2 00 |
| For every day's attendance in making any survey,                                      | 4 00 |
| For every adjoining plat with notes of reference,                                     | 50   |



|                                                                                                                                                  |      |
|--------------------------------------------------------------------------------------------------------------------------------------------------|------|
| For every additional plat with certificate of survey and notes of reference, where there are not more than three plats contained in said survey, | 1 00 |
| For every additional plat in said survey,                                                                                                        | 25   |
| For surveying a town lot,                                                                                                                        | 2 00 |
| For each adjoining lot,                                                                                                                          | 1 00 |

## FENCES AND ENCLOSURES.

§ 1. If any horses, mares, mules, cattle, hogs, sheep, or goats, shall break into any grounds, enclosed with a strong and sound fence, five feet high, well staked and ridged, or sufficiently locked, and so close that the beasts breaking into the same could not creep through, which shall be deemed a lawful fence; the owner of such horses, mares, mules, cattle, hogs, sheep, or goats, or any of them, shall for the first trespass so committed, make reparation to the party injured, for the true value of the damage he shall sustain, and for every trespass afterwards, double damages; to be recovered with costs, in any court of record.

1807—(2)  
Cattle, &c.,  
breaking  
into enclos-  
ures.  
What a law-  
ful fence.

§ 2. The condition of the fence, at the time the trespass was committed, may be proved to a jury upon trial; and upon complaint made by the party injured, before any justice of the peace of that county wherein such trespass shall be, such justice is hereby empowered and required to issue his order, without delay, to three honest and respectable householders of the neighborhood, no ways related to the parties injured, nor interested concerning the trespass, reciting the complaint, and requiring them to view the fence, where the trespass is complained of, and to take memorandums of the same. And their testimony in such case, shall be good evidence to the jury, touching the lawfulness of the fence.

Condition of  
the fence,  
how proved.

§ 3. If any person injured for want of such sufficient fence, shall hurt, wound, lame, kill, or destroy, or shall cause to be hurt, wounded, lamed, killed, or destroyed, by shooting, hunting with dogs, or otherwise, any of the kind or breed of horses, mules, cattle, sheep, hogs, &c; he or she so offending, shall satisfy and pay the owner of the beasts so hurt, wounded, lamed, killed, or destroyed, double damages, with costs, recoverable as aforesaid: *Provided, nevertheless,* That if the party liable to damages, as aforesaid, in either case, will abide by and pay what shall be deemed reasonable by three neighbors, indifferently chosen to assess the same, it shall be a bar against such suit.

Penalty for  
injuring cat-  
tle that tres-  
pass on in-  
sufficient  
fence.

§ 4. For the better ascertaining and regulating of partition fences, it is hereby directed, that where any neighbors shall improve lands adjacent to each other; or where any person shall enclose any land, adjoining to another's land already fenced in, so that any part of the first person's fence becomes the partition fence between them; in both these cases, the charge of such division fence, so far as enclosed on both sides, shall be equally borne and maintained by both parties. To which, and other ends, in this law mentioned, each county court shall nominate and appoint, so many honest and able men, as they shall think fit, for each county respectively, to view all such fences, about which any difference may happen or arise. And the aforesaid persons, in each county respectively, shall be the sole judges of the charge to be borne by the delinquent, or by both or either party; and

Partition  
fences.



of the sufficiency of all fences, whether partition fences, or others. And where they judge any fence to be insufficient, they shall give notice thereof to the owners or possessors; and if any one of the said owners or possessors, upon the request of the other, and due notice given by the said reviewers, shall refuse to make or repair the said fence or fences, or to pay the moiety of the charge of any fence before made, being a division fence, within ten days after notice given; then, upon proof thereof before two justices of the peace of the respective counties, it shall be lawful for the said justices to order the person aggrieved and suffering thereby, to repair the said fence or fences, who shall be reimbursed his costs and charges, from the person so refusing to make good the said partition fence or fences, and the said costs and charges shall be levied upon the offender's goods and chattels, under warrant from the said justice, by distress and sale thereof; the overplus, if any, to be returned to the party offending.

Enclosure  
by palisades,  
dikes,  
hedges, &c.

§ 5. Nothing, herein contained, shall be intended to prevent or debar any person or persons, from enclosing his or their grounds, with sufficient walls or palisades, or by dikes, hedges and ditches:—all such walls and palisades to be in height, at least five feet from the ground; and all such dikes to be at least three feet in height from the bottom of the ditch, and planted or set with thorn or quickset; so that such enclosures shall fully answer and secure the several purposes meant to be answered and secured by this law: *Provided, also,* That such walls and palisades, and dikes, hedges, and ditches, shall be subject to all provisions, inspection, and restrictions, respectively, to which, by this law, any other enclosure or fence is made liable, according to the true intent and meaning thereof.

## FINANCIAL DEPARTMENT.

1. *Accounts and Disbursements.*
2. *Collection of Public Dues.*

### I. ACCOUNTS AND DISBURSEMENTS.

Con. Ala.  
Art. 6.  
Sec. 7.

§ 1. No money shall be drawn from the treasury, but in consequence of an appropriation made by law; and a regular statement and account of the receipts and expenditures of all public moneys shall be published annually.

1806—(2)  
Sec. 1.  
Oath and  
bond of  
comptroller.

§ 2. The comptroller of public accounts,<sup>1</sup> before he shall be qualified to act, shall take an oath, impartially and honestly to discharge the duties of his office, and shall give bond, with two or more sufficient securities, payable to the governor for the time being, and his successors in office, in the penal sum of five thousand dollars, conditioned for the faithful discharge of the duties of the said office. The said comptroller shall keep his office in the place designated by law for the sitting of the general assembly.

Office at seat  
of govern-  
ment.

<sup>1</sup> The comptroller is elected annually by the general assembly. Con. Art. 4, § 23.



§ 3. It shall be the duty of said comptroller to examine, state, settle, and audit all accounts, claims, or demands whatsoever, against the state, arising under any law or resolution of the legislature; and to grant to every claimant, authorized to receive the same, a warrant on the state treasurer, under his hand and seal of office; making due entry and register of all his proceedings, in a book to be kept for that purpose; and carefully arranging, filing, and preserving in his office, all accounts, receipts, vouchers, and papers touching the same; to examine, settle, and audit the accounts of all public debtors, collectors of any tax or revenue, levied by act of the legislature, and payable to the state treasurer; to call upon all such debtors, to render accounts, and pay into the treasury all sums and balances due, and, on their failure so to do, to institute proceedings against them at law; to require information on oath from any person, party or privy, of any matter relative to any account under his examination, and material for his information; to state and keep the accounts, so as to show the amount of all warrants by him drawn on the treasurer, for what services or articles of public expense they were given; and to lay before the general assembly, annually, and as often as thereto required, the general accounts, together with an account of all balances due to and from the state.

*Ib. Sec. 2.*  
Comptroller's duties.

§ 4. It shall be the duty of said comptroller to decide on the official forms of all papers to be issued for collecting the public revenue, and the manner and form of keeping the accounts of persons employed therein; and the books and accounts of the treasurer, and all other persons concerned in the collection and safe-keeping of the public moneys or funds of this state, shall, at all seasonable times, be open to the examination and inspection of the said comptroller.

*Ib. Sec. 3.*  
To furnish forms, and regulate and examine books and accounts.

§ 5. It shall not be lawful for the state treasurer to pay or receive any public money but on warrant or certificate from said comptroller, who shall begin on the first day of January, annually, and number each warrant for the payment of money, beginning at number one, and continuing progressively until the last day of December following, inclusively.

*Ib. Sec. 4.*  
No money to be paid or received, but on warrants.

§ 6. The said comptroller shall procure a seal of office, the legend of which shall be, "State of Alabama, Comptroller's Office;" also, all books and stationery necessary for the use of his office: and the accounts for the said seal, books and stationery, shall be audited and paid to said comptroller, by the state treasurer, without warrant; and the said seal and books shall appertain to the said office, and be delivered over by said comptroller, his executors or administrators, to his successor.

*Ib. Sec. 8.*  
Comptroller's seal of office.

§ 7. No warrant shall ever be issued by the comptroller of public accounts, until after provision has been made by law, for the allowance or pay of such demand.

1807—(15)  
*Sec. 1.*  
No warrant to issue without appropriation.

§ 8. It shall be the duty of the comptroller of public accounts, to draw special warrants on the state treasurer, when he shall be thereto required, for all moneys of whatever amount, which by law are directed to be paid out of the state treasury, but by special warrant; which warrant shall express on what particular account such money is due by the state. And it shall be the duty of the state treasurer to examine whether such warrant has been issued agreeably to law, before he shall pay the same, and after making due examination, if he shall find such warrant has been issued agreeably to law, he shall pay such warrant to the person legally entitled to receive the same, taking his or her receipt therefor; and shall also make a proper entry in his books, of each and every such warrant, and shall keep

*Ib. Sec. 2.*  
Comptroller's warrants to be special.

Treasurer's duty when warrant is presented.



the same regularly filed in his office ; and it shall be the duty of the comptroller to take a receipt for every warrant so issued by him, and to keep the same regularly filed in his office.

1809—(8)  
Sec. 3.  
Comptroller  
to report to  
treasurer  
monthly.

§ 9. It shall be the duty of the comptroller of public accounts, to render to the state treasurer, monthly, an account of all warrants that shall have been issued by him on the state treasurer during the preceding month.

1815—(15)  
Sec. 21.  
Annual re-  
ports.

§ 10. The annual reports of the comptroller of public accounts and of the state treasurer, shall be made up to the first of November in every year.

1826—(14)  
Sec. 1.  
Comptroller  
to settle ac-  
counts and  
publish de-  
faulters.

§ 11. It shall be the duty of the comptroller of public accounts to adjust and settle all public accounts which are now, or hereafter may remain due and unpaid, for the space of one year, and to publish in some newspaper published at the seat of government, a list of the names of the respective defaulters, and the amount due to the state from each, how the debt accrued to the state, and when the same became due and payable.

*Ib.* Sec. 2.  
Defaulters'  
claims to be  
deducted out  
of their  
debts.

§ 12. It shall not be lawful for the comptroller or treasurer to pay to any public defaulter, any sum of money which may be due to such defaulter for his salary, per centage or commission ; but it shall be the duty of the comptroller and treasurer to retain the moneys due the state from all public defaulters, out of their salaries, &c. ; and at the expiration of every year, to apply the sum or sums so retained, to their credit, till the whole debt and interest so due by them shall be fully paid and satisfied.

1827—(14)  
Sec. 1.  
Comptroller  
to report dis-  
bursements  
from contin-  
gent fund.

§ 13. It shall be the duty of the comptroller of public accounts to lay before both houses of the general assembly, annually, in the first week of its session, a full expose of the disbursements made from the contingent fund, to whom paid, and for what services.

1827—(35)  
Sec. 1.  
Revenue law  
distributed  
annually.

§ 14. It shall be the duty of the comptroller of public accounts, immediately after the adjournment of the general assembly in each year, to have the revenue law printed, and a copy certified by the secretary of state, and one sent to each of the tax-collectors, and clerks of the county courts in the several counties in this state.

1830—(5)  
Sec. 1.  
Comptrol-  
ler's and  
treasurer's  
offices to be  
examined  
annually.

§ 15. The comptroller's and treasurer's offices shall be examined annually, by a joint committee of three members from each branch of the legislature, who shall report to their respective houses, the condition of said offices, and whether the comptroller and treasurer have discharged their duties strictly, according to law.

## 2. COLLECTION OF PUBLIC DUES.

1820—(11)  
Sec. 1.  
Proceedings  
against hold-  
ers of public  
money.

§ 16. When any collector of the revenue, or other person accountable for public money, shall neglect to pay the same into the treasury, by the time which by law he shall be required to do, it shall be the duty of the comptroller of public accounts, immediately to institute suit for the recovery of the same, by notifying such delinquent collector or other person, his security or securities, their executors or administrators, that he will, by the attorney-general, on such a day as shall be named in such notice, before the circuit court of Tuska-loosa county, move for judgment against him or them, and his security or securities for the amount due to the state. And service of such notice shall be made on the defendant or defendants, by the sheriff of the county where the defendant or defendants may be found, at least fifteen days previously to the day on which the motion shall be made ; and it shall be the duty of the sheriffs of the several counties, respectively, on the receipt of every such notice, immediately

Comptroller  
to give  
notice,

to be served  
by sheriff.



and without delay, to execute the same, by serving the defendant or defendants with a copy thereof, and to return the original with an account of his proceedings on the back thereof, to the clerk of the circuit court of Tuskaloosa county, on or before the day appointed for such motion to be made; for which service the sheriff shall be entitled to receive the same pay that is allowed for the service of writs, and the notice so served and returned, shall be deemed the leading process in the suit.

§ 17. It shall be the duty of the judge of the circuit court for the circuit embracing the county of Tuskaloosa, on the request of the comptroller for that purpose made, to hold a special session of said court at the town of Tuskaloosa, for the purpose aforesaid; and in such case the judge shall issue his warrant, under his hand and seal, directed to the clerk of said court, who shall thereupon give notice to the attorney-general, and the other officers of the court, and shall issue all necessary process, returnable to said special session; which process the sheriffs of the several counties, respectively, to whom the same may be directed, shall be bound to execute, under the same limitations and restrictions as in the case of a regular court in course.

*Ib. Sec. 2.*  
Special court  
to be held on  
request of the  
comptroller.

§ 18. In every case of delinquency, where suit shall be instituted as aforesaid, a transcript from the books and proceedings of the comptroller, authenticated under the seal of his department, shall be admitted as evidence; and the court trying the cause, shall be thereupon authorized to grant judgment for the amount due the state, together with fifteen per centum damages, and interest of eight per centum per annum, from the day on which the same became due, and award execution accordingly. And all copies of bonds, contracts, and other papers, relating to, or connected with the accounts between this state and any individual, when certified by the comptroller to be true copies of the originals on file, and authenticated under the seal of his department as aforesaid, may be annexed to such transcripts, and shall have equal validity, and be entitled to the same degree of credit, which would be due to the original papers, if produced and authenticated in open court: *Provided*, That when suit is brought upon bond or other sealed instrument, and the delinquent shall plead *non est factum*, or upon motion to the court, such plea or motion being verified by the oath of the defendant, it shall be lawful for the court to take the same into consideration; and if it shall appear to be necessary for the attainment of justice, to require the production of the original bond, contract, or other paper, specified in such affidavit.

*Ib. Sec. 3.*  
Transcript  
from comptroller's  
books, sufficient  
evidence.

Damages and  
interest.

Copies of  
bonds, &c.  
authentic as  
originals.

In certain cases court  
may order  
production of the original.

§ 19. When suit shall be instituted as aforesaid, against any person or persons indebted to this state as aforesaid, it shall be the duty of the court to grant judgment at the return term on motion; unless the defendant shall in open court, the attorney-general being present, make oath or affirmation, that he is equitably entitled to credits which have not been allowed him, specifying each particular credit in the affidavit, and that he cannot then come safely to trial; oath or affirmation to this effect being made, subscribed and filed, if the court be thereupon satisfied, a continuance until the next succeeding term may be granted, but not otherwise: *Provided*, That in all cases where the defendant shall appear and contest the claim of the state, and demand the benefit of a trial by jury, the court shall *instantly* empanel a jury, if at a special session, of by-standers, to try the issue, and give judgment accordingly.

*Ib. Sec. 4.*  
Judgment at  
return term.

Ground of  
continuance.

Trial of issue  
by jury.

§ 20. In all cases of insolvency, or when any estate in the hands of the executors, administrators, or assignees, shall be insufficient to

*Ib. Sec. 5.*  
State to have  
preference in



case of insol  
vency.

Sureties pay  
ing debt, to  
have like  
preference.

Includes  
property as-  
signed or at-  
tached.

*Ib. Sec. 6.*  
Contents of  
lost bond,  
&c. may be  
proved.

*Ib. Sec. 7.*  
No remedies  
taken away  
by this act.

pay all the debts due from the deceased to the state, the debt or debts due to the state shall be first satisfied; and any executor, administrator, or assignee, or other person, who shall pay any debt due by the person or estate, from whom, or for which they are acting, previous to the debt or debts due to the state from such person or estate, being first duly satisfied and paid, shall become answerable in their own person and estate, for the debt or debts so due to the state, or so much thereof as may remain due and unpaid; and actions or suits at law may be commenced against them for the recovery of said debt or debts, or so much thereof as may remain due and unpaid, in the proper court having cognizance thereof: *Provided*, That if the principal, in any bond which shall be hereafter given to this state, shall become insolvent; or if such principal being deceased, his or her estate and effects, which shall come to the hands of his or her executors, administrators, or assignees, shall be insufficient for the payment of his or her debts; and if, in either of said cases, any surety on the said bond or bonds, or the executors, administrators, or assignees of such surety, shall pay to the state the money due upon such bond or bonds, such surety, his or her executors, administrators, or assignees, shall have and enjoy the like advantage, priority, or preference, for the recovery and receipt of the said moneys out of the estate of such insolvent or deceased principal, as are reserved and secured to the state, and may bring and maintain a suit or suits upon the said bond or bonds, in law or equity, in his, her, or their own name or names, for the recovery of all moneys paid thereon. And the cases of insolvency, mentioned in this section, shall be deemed to extend to cases in which a debtor, not having sufficient property to pay all his or her debts, shall have made a voluntary assignment thereof, and to cases in which the estate and effects of an absconding, concealed, or absent debtor, shall have been attached by process of law.

§ 21. If any bond, contract, or other paper, relating to, or connected with any account between this state and any individual, has been, or hereafter shall be, lost or mislaid, so that the same cannot be produced in court, it shall be lawful for the court to receive evidence of the fact, and of the contents of such bond, contract, or other paper; and such evidence shall be entitled to the same degree of credit, which would be due to the original papers if produced and authenticated in open court.

§ 22. Nothing in this act shall be construed to repeal, take away, or impair any legal remedy or remedies for the recovery of debts now due, or hereafter to be due to this state, in law or equity, from any person or persons whatever, or to defeat any suit or suits now pending in behalf of the state against any person or persons whatever, which remedy or remedies might be used if this act was not in force.

NOTE.—For the mode of proceeding against tax-collectors, failing to make returns—See “Taxes.”



## FINES, FORFEITURES, AND PENALTIES.

§ 1. In all prosecutions for offences less than capital, no person shall, on conviction, be fined in a greater sum than shall be assessed by the verdict of a jury; and in all cases, where the defendant or defendants to any indictment whatsoever shall plead guilty, the court, before whom the prosecution is depending, shall forthwith empanel a jury to assess the fine, which shall be inflicted on such defendant or defendants.

1807—(6)  
Sec. 53.  
Jury to assess fines.

§ 2. All fines and forfeitures which may be recovered by virtue of this act, shall be collected by the sheriff of the county where the offender is tried, or of that in which he may reside, and accounted for in the same manner that public taxes are or may be accounted for; and whenever the court, before whom any offender or offenders may be tried and fined by the verdict of a jury, shall be of opinion, that such offender or offenders, is or are unable to pay the fine so inflicted, and that his, her, or their imprisonment will operate to increase the public expenditure, the said court are hereby authorized and required to discharge him, her, or them, from custody.

*Ib.* Sec. 56.  
Where to be collected.  
[a Sec. 44 of this act.]

Imprisonment for fines.

§ 3. The clerks of the several courts within this state shall, immediately after the rising of the respective courts, issue execution in all cases in which executions are issued by law, for the fines, forfeitures, and amercements, that may have accrued to the state, and unpaid previous to the rising of such court, (and shall make out and certify to the comptroller of public accounts, and county treasurer, respectively, a fair abstract of all fines, amercements, and penalties, which shall be assessed, had, or recovered in his court, immediately after the end of every term, specifying therein the names of the persons, the amount of the judgment, and offence for which the recovery is had, and shall, within one month after the rising of such court, cause the same to be transmitted to the comptroller and county treasurer, respectively,) together with the name of the sheriff or other officers that shall have become liable to pay the same by law, to enable said comptroller to call them to account. And every clerk, failing to perform the aforesaid duty, shall forfeit and pay the sum of two hundred dollars, to be recovered by the comptroller of public accounts, on motion to the circuit court, and applied to the use of the state: *Provided*, that ten days' notice in writing be given of every such motion.<sup>1</sup>

1808—(1)  
Sec. 1.  
Clerks to issue execution for fines,

[b 18] 2—(30)  
Sec. 6.]  
and certify abstract to comptroller and county treasurer.

Penalty for neglect of duty.

§ 4. If any sheriff or other officer shall make return upon any writ of *feri facias*, or *venditioni exponas*, that he hath levied the fine, forfeiture, or amercement, as in such writ is required, or any part thereof, or shall return upon any writ of *capias ad satisfaciendum*, that he hath taken the body or bodies of the defendant or defendants, or hath the same ready to satisfy the fine, forfeiture, or amercement, in such writ mentioned, or have suffered him, her, or them to escape; or if any person shall be committed to the custody of such officer, by any of the courts of this state, until the fine, forfeiture, or amercement, for which he, she, or they were committed, shall be paid, and shall suffer him, her, or them to escape; or shall actually have received the same, and shall not, in every such case, immediately, or as soon as may be, account to the comptroller, and

*Ib.* Sec. 2.  
Sheriffs, &c. liable to judgment on motion, for not accounting for fines received.

<sup>1</sup> All fines are now payable into the county treasury.—See § 10.



pay the same into the state treasury; then, and in each of said cases, it shall be lawful for the comptroller of public accounts, upon motion in the circuit court, to demand judgment against such sheriff or other officer, or their securities, for the fine, forfeitures, or amercements, mentioned in such writ, or for so much as shall be returned levied, or for the amount for which the defendant or defendants shall have been committed, and such court is hereby authorized and required to give judgment accordingly, and award execution thereon: *Provided*, Such sheriff or other officer have ten days' previous notice of such motion.<sup>1</sup>

*Ib. Sec. 4.*  
Clerks to pay to comptroller semi-annually, the amount received for taxes on suits. Penalty for neglect.

§ 5. It shall be the duty of the clerks of the several courts within this state, on or before the first day of May and November, in every year, respectively, to account on oath to the comptroller of public accounts, and pay into the state treasury the amount of all taxes that shall become due from them by law, on law process and suits; and if any clerk shall neglect or refuse so to account, and pay as aforesaid, then, and in such case, it shall be lawful for the comptroller of public accounts, on motion made in the circuit court, to demand judgment against such clerks or their security, for double the amount of taxes that may be due and owing from said clerk by law, which he shall ascertain from the truest information he can get of the same, and such court is hereby authorized and required to give judgment accordingly, and award execution thereon: *Provided*, Such clerk have ten days' previous notice of such motion.

*Ib. Sec. 5.*  
Fines, &c. to be paid over in like manner.

§ 6. If any clerk of any of the courts of this state shall receive any fine, forfeiture, or amercement, which shall come into his hands by law, he shall account for and pay the same in like manner, and be subject to the same remedy and proceedings against him for default, as is directed by this act, in case of taxes on law process.

*Ib. Sec. 6.*  
Justices subject to same responsibilities as clerks.

§ 7. All fines imposed by law, and collected by any justice of the peace in behalf of this state, shall be accounted for by such justice, and paid in like manner, and subject to the same remedy and proceedings against him for default as is directed by this act, in case of fines received by clerks.

1812—(21)

*Sec. 1.*  
Circuit court empowered to give judgment against clerks, &c.

*See § 3.*  
*Ib. Sec. 2.*  
Sheriff not liable for the casual escape of a prisoner.

§ 8. The circuit court in each county within this state, shall have power to give judgment and award execution against any clerk of a court for a failure to comply with the requisitions of the first section of the act to which this is an amendment,<sup>a</sup> in the same manner that the supreme court formerly could have done.

§ 9. No sheriff or coroner, as the case may be, shall be liable to pay the fine, forfeiture, or amercement, which may have been imposed by any court of this state, against any person who shall have been committed to his custody, by the court imposing the same, or where any person shall be taken in execution to satisfy any fine, forfeiture, or amercement, unless such sheriff or coroner shall have received the money, or suffered a willful or negligent escape; but whenever the proper tribunal shall have discharged any person who was committed or taken in execution as aforesaid, or such person shall have escaped without any connivance or neglect of the sheriff or coroner, (as the case may be,) upon proof thereof made to the circuit court of the county where such person has been in cus-

<sup>1</sup> The third section of this act requiring fines, &c. to be paid in gold, silver, or territorial warrants, was repealed by sec. 1 of act of Dec. 17, 1821, and by sec. 13 of act of Dec. 20, 1823.—See "Banks,"—§ 1, and "Bank of the State of Alabama."—§ 13.



today, such court shall certify the same to the comptroller of public accounts, who shall release such officer from the fine, and forfeiture, or amercement, with which he may have been charged, on account of such person committed by the court, or taken in execution as aforesaid.

§ 10. All fines and forfeitures shall hereafter be paid into the county treasury, and not into the state treasury; and the clerks of the courts shall return to the county treasury of their respective counties, an account of fines and forfeitures, in the same manner, and at the same time, that they are now by law required to return the same to the comptroller of public accounts, and to pay over the money, when collected, to said county treasurer, at the same time, and in the same manner, they are now by law required to pay the same into the state treasury; and the county treasurer is hereby required to proceed immediately against any officer, who shall fail to comply with the provisions of this section.

1815—(5)  
Sec. 3.  
Fines, &c. to  
be paid into  
the county  
treasury.

County treas-  
urer to pro-  
ceed against  
delinquents.

NOTE.—For the mode of recovering and appropriating penalties, when the particular act creating them points out none,—See “Judicial Proceedings at Common Law,”—§ 99, 100, 101.

## FIRE-HUNTING.

§ 1. It shall not be lawful for any person or persons to hunt with fire in the night-time; and every person convicted thereof, shall forfeit and pay for every such offence, the sum of fifty dollars; one-half to go to the use of the informer, and the other half to go to the use of the county: *Provided*, That this act shall be construed, only to embrace persons hunting deer with a gun and fire at night.

1822—(5)  
Penalty for  
fire-hunting.

§ 2. If any person hunting with fire in the night time, shall kill any horse, mare, colt, neat-cattle, hog, sheep, or other domestic animal, not being his own, the person or persons, so offending, shall be liable, to an action at law, for double damages to the person aggrieved, in addition to the above penalty.

1803—(1)  
Double dam-  
ages for cat-  
tle killed.

§ 3. If any slave or slaves shall be discovered fire-hunting in the manner aforesaid, such slave or slaves, on conviction thereof, in manner aforesaid, before any one justice of the peace,<sup>1</sup> for the county wherein the offence may be committed, shall, by order of said justice, receive thirty-nine lashes well laid on, on his bare back; and the master or owner of said slave, or person in whose care he shall be, shall forfeit and pay the sum of ten dollars for each slave so convicted, to be levied by a warrant, immediately to be issued by such justice for the purpose.

Slaves hunt-  
ing to be  
whipped.

§ 4. If any person shall be convicted, before two justices of the peace, in manner aforesaid, of sending or having sent his or her slave, or any slave in his charge or care, to fire-hunt, in manner before mentioned, the person or persons, so offending, shall be subject to

Persons send-  
ing slaves to  
hunt, liable.

<sup>1</sup> The penalty, imposed by the act of 1803, for fire-hunting, was a fine of twenty dollars, or on failure of the person convicted, to pay the fine, imprisonment, without bail, not less than one, nor more than three months; this punishment was provided only in case of fire-hunting “within four miles of any settlement,” and might be inflicted, by “any two justices of the peace, of the county wherein the offence was committed, by oath of one or more credible witnesses.” Sec. 1.



the same pains as are provided by this act to be inflicted on fire-hunters, but the slave so sent shall receive no punishment.

How to compel witnesses to testify.

§ 5. If any person, summoned to give evidence against any person accused under this act, shall refuse or neglect to give such evidence, the person, so refusing or neglecting, shall be committed to the jail of the county where the offence shall be committed, until he or they shall give testimony against the said offender.

This act to be read to the militia.

§ 6. The captains of the several companies of militia in this state, shall cause this act to be read at the head of their respective companies, twice in every year, after the publication thereof, under the penalty of forfeiting to the use of the county, for every such neglect, five dollars, recoverable by warrant of any justice of the peace, on the oath of two reputable witnesses.

### FORCIBLE ENTRY AND DETAINER.(1)

1805—(3)  
Entries to be peaceable.

§ 1. No person shall enter upon any lands, tenements, or other possessions, and detain and hold the same, but where entry is given by law; and then only in a peaceable manner.

What amounts to a forcible entry and detainer.

§ 2. If any person shall enter upon, or into any lands, tenements, or other possessions, and detain and hold the same, with force or strong hand, or with weapons; or by breaking open the doors, windows, or other part of a house, whether any person be in it or not; or by any kind of violence whatsoever; or by threatening to maim, kill, or beat, the party in possession; or by such words, circumstances, or actions, as have a natural tendency to excite fear or apprehension of danger; or by putting out of doors, or carrying away, the goods of the party in possession; or by entering peaceably, and then turning by force the party out of possession; or by frightening by threats, or other circumstances of terror; in such case, every person so offending shall be guilty of a forcible entry and detainer, within the meaning of this act.

(1) The following points have been decided under this statute:

1. A tenant at will may maintain a writ of forcible detainer. *McDonald v. Gayle*, *Min. Rep.* 98.
2. The record must show that the plaintiff has had actual possession. *Childress v. McGehee*, *ib.* 131.
3. To establish possession, the plaintiff may prove a tenancy under him, and possession by his tenant. *Lecatt v. Stewart*, 2 *Stewt. Rep.* 474.
4. In a complaint of unlawful detainer, the possessory title of the plaintiff was good, but defectively described:—held good after verdict. *Payne v. Martin*, 1 *Stewt. Rep.* 407.
5. The county court has no jurisdiction by *certiorari* or appeal, in cases of forcible entry and detainer. *Dunham v. Carter and Carroll*, 2 *Stewt. Rep.* 496.
6. It is discretionary with the judge to require bond and security on granting a *certiorari*; and the court may order a new bond to be taken. *Childress v. McGehee*, *Min. Rep.* 131.
7. When removed, the cause is not triable *de novo*, but on the justices' record, without a jury. *McDonald v. Gayle*, *Min. Rep.* 98. *Dunham v. Carter and Carroll*, 2 *Stewt. Rep.* 496.
8. The justice is not required to state all the evidence given, but only such as is objected to, and the proper proof to support the verdict will be presumed to have been made, unless the contrary appear. *Payne v. Martin*, 1 *Stewt. Rep.* 407. *Lecatt v. Stewart*, 1 *Stewt. Rep.* 474.
9. Complaint for unlawful detainer: verdict, guilty: the magistrate entered judgment for a forcible and unlawful detainer. The word *forcible* held to be surplusage, and no error. *Payne v. Martin*, 1 *Stewt. Rep.* 407. See also *Grice v. Ferguson*, 1 *Stewt. Rep.* 36.



§ 3. No person, who shall lawfully or peaceably enter upon or <sup>Forcible de-</sup> into any lands, tenements, or other possessions, shall hold or keep <sup>tainer.</sup> the same unlawfully, and with force, or strong hand, or weapons, or violence, or menaces, or terrifying words, circumstances, or actions aforesaid; and it is hereby declared, that whatever words or circumstances, conduct or actions, will make an entry forcible under this act, shall also make a detainer forcible.

§ 4. The three preceding sections of this act shall extend to and <sup>All estates</sup> comprehend terms for years, and all estates, whether freehold, or <sup>included.</sup> less than freehold.

§ 5. If any tenant or tenants, for term of life or lives, year or <sup>Tenants</sup> years, or other person or persons, who are or shall be in possession <sup>holding over,</sup> of any lands, tenements, or hereditaments, by, from, or under, or by <sup>guilty of un-</sup> collusion with, such tenant, or tenants, shall wilfully, and without <sup>lawful de-</sup> force, hold over any lands, tenements, or hereditaments, after de- <sup>tainer.</sup> mand and notice in writing given, for the delivery of the possession thereof, by his, her, or their landlord or landlords, lessor or lessors, or the person or persons to whom the remainder or reversion of such lands, tenements, or hereditaments shall belong, his, her, or their agent or attorney thereunto lawfully authorized, then such person or persons, so holding over, shall be guilty of an unlawful detainer.

§ 6. The aforesaid forcible entries and detainers, and unlawful de- <sup>Cognizable</sup> tainers, are hereby made cognizable before any justice of the peace <sup>before justice</sup> of the county in which they are committed. <sup>of the peace.</sup>

§ 7. When complaint to any justice of the peace of the proper <sup>On com-</sup> county shall be made in writing, and signed by the party aggrieved, <sup>plaint made,</sup> his agent, or attorney, specifying the lands, tenements, or other pos- <sup>justice to is-</sup> sessions, so forcibly entered upon and detained, or forcibly or unlaw- <sup>sue a venire.</sup> fully detained, by whom and when done, and the estate therein, it shall be the duty of the said justice to issue a precept under his hand and seal, directed to the sheriff<sup>1</sup> of the said county, commanding him to cause to come before the said justice, twelve good and lawful men of the said county, qualified to serve as petit jurors, to inquire into and try such forcible entry and detainer, or forcible or unlawful detainer; which precept shall be in the form, or to the effect following, that is to say:

"County of \_\_\_\_\_, ss. <sup>Form.</sup>  
 "The State of Alabama, to the Sheriff of the said county, Greet- <sup>[a Con. Ala.</sup>  
 ing: *Whereas*, Complaint is made to the undersigned justice of the <sup>Art. 5, Sec.</sup>  
 peace for the said county, of a certain forcible entry and detainer, <sup>17.]</sup>  
 (or of a certain unlawful detainer, as the case may be,) made by E.   
 F. into the messuage, or upon the lands of C. D. in the county aforesaid. You are, therefore, hereby commanded to cause to come before the undersigned justice aforesaid, at the hour of \_\_\_\_\_, in the \_\_\_\_\_ noon of the \_\_\_\_\_ day of \_\_\_\_\_, twelve good and lawful men, of your county, to inquire of and try the said forcible entry and detainer, or forcible or unlawful detainer. Given

1 The act of Dec. 31, 1823, prohibits sheriffs and coroners from executing any process issued by a justice of the peace in civil cases, except attachments. The act of January 12, 1826, provides,—Sec. 1. "That so much of the before-recited act as prohibits sheriffs from executing precepts, issued by justices of the peace, of *forcible entry and detainer*, be and the same is hereby repealed." Sec. 2. "That it shall be the duty of sheriffs to execute all such precepts of *forcible entry and detainer*, issued by justices of the peace, under the same rules and regulations that they were under, before the before-recited act was passed, all laws to the contrary notwithstanding."



under the hand and seal of the said justice, this                      day  
of                      , in the year of our Lord, one thousand," &c.

Summons to  
the defend-  
ant.

§ 8. The said justice shall issue a summons to the party complained against, in the words or to the following effect:

"County of \_\_\_\_\_, ss.

[a Con. Ala.  
Art. 5, Sec.  
17.]

"The State of Alabama, to the Sheriff of the said county, Greeting: You are hereby commanded to summon E. F. of the said county, to appear before the undersigned justice of the peace in and for the county aforesaid, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon of the \_\_\_\_\_ day of \_\_\_\_\_, to answer to, and make defence against, the complaint of C. D. of a forcible entry and detainer, (*or forcible detainer, as the case may be,*) made by the said E. F. into the messuage, or upon the lands of the said C. D. in the county aforesaid; and have you then and there this precept, with a return of your proceedings therein. Given under the hand and seal of the said A. B. the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand, &c. A. B. [L. s.]"

### Summons, how served.

§ 9. The said summons shall be served upon the party against whom the said complaint is made, or a copy thereof left at his usual place of abode, six entire days before the day of appearance therein mentioned; and such service of the said summons, in any part of this state, as well out of the said county as in it, shall be good and effectual in law. And further, no jury shall, by virtue of this act, be sworn to inquire of and try any forcible entry and detainer, or forcible or unlawful detainer, where such previous notice shall not have been given as aforesaid.

Defendant may plead not guilty, or three years' possession.

§ 10. The party, against whom such complaint is made, may, at the time of appearance, mentioned in the said summons, and before the said jury is sworn, plead not guilty to the charge or complaint, or that he hath been three years in quiet possession, and his estate therein not ended or determined, agreeably to a subsequent clause in this act; and, thereupon, the parties shall be at issue; and the said justice shall proceed to swear the jury, so returned, to inquire of and try the same. And if the said party, against whom the complaint is made as aforesaid, does not appear at the time specified in the said summons, or appearing, does not plead to the said complaint, then it shall be lawful for the said justice to proceed in the same manner, as if he had pleaded not guilty.

**Jurors' oath.**

§ 11. To the said jurors, and each of them, who shall be returned to inquire of and try the said complaint, the justice shall administer the following oath or affirmation: "You do swear (or affirm,) that you will well and truly try this issue, joined between C. D. and E. F., and a true verdict give according to the evidence."

Complaint to  
be read to  
the jury.

§ 12. When the jury shall be sworn as aforesaid, the justice shall cause the said complaint to be read to them, and then call upon the complainant to support the same.

Proceedings  
on judgment  
for com-  
plainant.

§ 13. If the jury find the party against whom such complaint is exhibited, guilty, or find against his plea of possession, it shall be the duty of the said justice to record the said verdict, and to give judgment thereon, with costs: and also, to issue a writ of restitution, directed to the sheriff, to cause the complainant to be re-seized, or re-possessed; to which shall be added a clause, commanding the sheriff to levy the said costs, of the goods and chattels of the offender; and for want thereof, to take the body of such offender, and safely keep him in close custody, in the common jail of the county, until he shall pay the same, or be thence delivered by due course of law.



§ 14. If the jury find against the complainant, the said justice shall record the verdict, and give judgment accordingly, with costs; and shall issue execution, directed as aforesaid, for the said costs, against the goods and chattels; and in want thereof, against the body of the complainant. Judgment against complainant.

§ 15. The said justice may, at the request of either party, and on good reasons being assigned, postpone the trial to any time, not exceeding fifteen days; but such postponement shall be on the payment of costs. Justice may postpone trial.

§ 16. It shall be the duty of the said justice, to enter on his minutes or docket, true copies of the complaint, exhibited by virtue of this act, of the summons and *venire*, and their respective returns; and the names of the jurors, their verdict, and his judgment thereon; and also, the names of the witnesses, and the admission of evidence objected to, and the rejection of evidence offered, the reason of such admission or rejection, and all the proceedings had before him, touching the said complaint. Justice to make complete record of the proceedings.

§ 17. If the sheriff of any county shall neglect or refuse to execute, or return any precept, writ, or other process, directed and delivered to him, by virtue of this act, he shall, for every such offence, forfeit and pay two hundred dollars to the party aggrieved; to be recovered with costs, by action of debt, in any court of this state, having cognizance thereof. Sheriff's refusal to execute process.

§ 18. The proceedings had by virtue of this act, on such forcible entry and detainer, or forcible or unlawful detainer, may be removed before the circuit court of the county in which the same may have taken place; and such removal shall be by writ of *certiorari*, and in no other way, and then only after judgment. Proceedings may be removed by certiorari, after judgment.

§ 19. Neither the said judgment, nor anything in this act, shall bar or prevent the party injured, from bringing an action of trespass, or other actions, against the aggressor, or party offending. Civil actions not barred.

§ 20. The estate, or merits of the title, shall in no wise be inquired into, on any complaint which shall be exhibited by virtue of this act: *Provided, always*, That this act shall not extend to any person, who hath had the uninterrupted occupation, or been in quiet possession, of any lands or tenements, for the space of three whole years together, immediately preceding such complaint, so exhibited to the said justice, and whose estate therein is not ended or determined; but every such person may plead the same to the said complaint, which shall be tried in the manner hereinbefore prescribed. Merits of title not to be inquired into. Exceptions.

§ 21. Every justice of the peace, before whom any prosecution shall be instituted by virtue of this act, may issue a writ of *subpoena ad testificandum*, into any county of this state. Subpoenas may run to any county.

§ 22. In prosecutions under this act, the following fees shall be allowed: Officers' fees.

TO THE SHERIFF.

|                                                                                                                                                              |        |                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-----------------|
| For serving every summons and return,                                                                                                                        | \$1 00 | To the sheriff. |
| For summoning every jury, returning precepts, and attending the trial,                                                                                       | 4 00   |                 |
| For executing every writ of restitution,                                                                                                                     | 2 00   |                 |
| For serving every execution for costs, advertising property for sale, &c. the same fees as are, or shall be allowed, for like services in the county courts. |        |                 |



## TO THE JURORS AND WITNESSES.

To the jurors and witnesses.

The same fees as are or shall be allowed to them, respectively, in civil cases in the county courts.

## TO THE ATTORNEY.

To the attorney. Penalty on delinquent jurors and witnesses.

For the trial of every cause,<sup>1</sup> \$3 00

§ 23. Every person summoned as a juror, or subpoenaed as a witness, who shall not appear, or appearing, shall refuse to serve, or give evidence, in any prosecution instituted by virtue of this act, shall forfeit and pay, for every such default or refusal, unless some reasonable cause be assigned, such fine, not exceeding eight dollars in the case of a juror, and not exceeding one hundred dollars in the case of a witness, as the said justice shall think proper to impose; and such justice is hereby authorized and required, to issue an execution, directed to any constable of the said county, to levy the same of the goods and chattels of the said offender; which fine, when recovered, shall be applied by the said justice to the use of the said county.

1819—(6)  
Sec. 39.  
Writ of restitution to be suspended for 20 days.

§ 24. When any judgment shall be entered up for the plaintiff by any justice, on the trial of any cause for a forcible entry and detainer, or forcible or unlawful detainer, no writ of restitution shall be issued by said justice within twenty days from the day of entering said judgment.

## FRAUDS, AND FRAUDULENT CONVEYANCES.

1803—(7)  
Certain contracts required to be in writing.

§ 1. No action shall be brought, whereby to charge any executor or administrator, upon any special promise, to answer any debt or damage out of his own estate; or whereby to charge the defendant, upon any special promise, to answer for the debt, default, or miscarriage of another person; or to charge any person, upon any agreement made upon consideration of marriage; or upon any contract for the sale of lands, tenements, or hereditaments, or the making any lease thereof, for a larger term than one year; or upon any agreement, which is not to be performed within the space of one year from the making thereof; unless the promise or agreement, upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person, by him thereunto lawfully authorized.

Fraudulent conveyances, bonds, judgments, &c., void against the party liable to be affected thereby.

§ 2. Every gift, grant, or conveyance, of lands, tenements, or hereditaments, goods or chattels, or of any rent-common, or profit, out of the same, by writing or otherwise; and every bond, suit, judgment or execution, had, or made, and contrived of malice, fraud, covin, collusion, or guile, to the intent or purpose to delay, hinder, or defraud creditors, of their just and lawful actions, suits, debts, accounts, damages, penalties, or forfeitures; or to defraud or to deceive

<sup>1</sup> For the fees allowed the justices—see "Fees."



those who shall purchase the same lands, tenements, or hereditaments, or any rent, profit, or commodity out of them ; shall be from henceforth, deemed and taken only as against the person or persons, his, her, or their heirs, successors, executors, administrators, or assigns, and every of them, whose debts, suits, demands, estates, interests, by such guileful and covinous devices and practices as is aforesaid, shall or might be, in any wise disturbed, hindered, delayed, or defrauded, to be clearly and utterly void ; any pretence, color, feigned consideration, expressing of use, or any other matter, or thing, to the contrary notwithstanding. And moreover, if any conveyance be of goods or chattels, and be not, on consideration, deemed valuable in the law, it shall be taken to be fraudulent, within this act ; unless the same be by will, duly proved and recorded ; or by deed in writing, acknowledged and proved. If the same deed include lands, also in such manner as conveyances of lands are, by law, directed to be acknowledged or proved ; or, if it be of goods and chattels only, then acknowledged or proved by one or more witnesses, in the circuit court, or county court, wherein one of the parties lives, within twelve months after the execution thereof ; or unless possession shall really, and *bona fide*, remain with the donee. And in like manner, where any loan of goods and chattels shall be pretended to have been made to any person, with whom, or those claiming under him, possession shall have remained by the space of three years, without demand made and pursued by due course of law, on the part of the pretended lender ; or where any reservation or limitation shall be pretended to have been made, of a use or property, by way of condition, reversion, remainder, or otherwise, in goods and chattels, the possession whereof shall have remained in another as aforesaid ; the same shall be taken as to the creditors and purchasers, of the persons aforesaid, so remaining in possession, to be fraudulent within this act ; and that the absolute property is with the possession ; unless such loan, reservation or limitation of use, or property, were declared by will or by deed, in writing, proved and recorded as aforesaid.

Conveyances of goods or chattels, without valuable consideration, fraudulent.

Possession, when evidence of title.

§ 3. This act shall not extend to any estate or interest in any lands, goods, or chattels, or any rents-common, or profit out of the same, which shall be, upon good consideration, and *bona fide*, lawfully conveyed, or assured, to any person or persons, bodies politic, or corporate.

Not to extend to *bona fide* conveyances.

§ 4. All property mortgaged, or under any deed of trust or other legal incumbrance, which may afterwards be removed to any county in this state, shall be liable to the payment of any debts, which the holder of such mortgaged property may contract, after his settlement in such county ; unless the mortgage, deed of trust, or incumbrance, covering such property removed as aforesaid, shall be duly recorded in the clerk's office of the county court of the county, to which such property may be removed, within six months ; unless the person bringing such incumbered property into any county in this state, shall have removed from another state ; in which case, one year shall be allowed for the recording of any such mortgage, deed of trust, or other legal incumbrance, after such settlement as aforesaid : *Provided, however*, That after such record, duly made, the provisions herein shall cease to take effect : *Provided, also*, That this act shall not be construed to affect any mortgage, deed of trust, or other legal incumbrance, existing at the time of the passage thereof.

1823—(24)  
Sec. 1.  
Mortgages, &c. to be recorded in county to which property is removed.

§ 5. All deeds and conveyances of personal property in trust to secure any debt or debts, shall be recorded, in the office of the clerk of

1823—(7)  
Sec. 1.  
Deeds of



trust void against creditors and purchasers without notice, unless recorded.

the county court of the county wherein the person making such deed or conveyance shall reside, within thirty days, or else the same shall be void against creditors and subsequent purchasers, without notice; and if any such conveyance be made of real estate, the same shall be recorded, in the office of the clerk of the county court of the county wherein the estate may be situate, within sixty days, or the same shall be void against creditors or subsequent purchasers, without notice.

*Ib. Sec. 2.* Plaintiff in execution may have the benefit of a deed of trust, on paying off the debt secured by it.

§ 6. In all cases, wherein property shall be conveyed by a deed in trust to secure any debt or debts, it shall be lawful for any person or persons, not a party thereto, holding an execution against the person or persons making such deed or other conveyance in trust, to pay the debt or debts secured by such deed, if he choose so to do; and on paying the same, the plaintiff or plaintiffs in said execution shall be placed in the same situation, that the person or persons, for whose benefit the trust was executed, occupied; and the said deed or other conveyance shall inure to the use and benefit of the plaintiff or plaintiffs in the execution, so far as to secure him or them the amount of the debt so paid, and the trustee shall be bound to execute the trust, in the same manner as if the parties had not been changed, so as to secure the plaintiff or plaintiffs in the said execution the amount so paid to the person or persons for whose benefit the said deed or conveyance was first executed.

*Ib. Sec. 3.* Deeds of trust, how proved. 1828—(35)

*Sec. 1.* Deeds, how affected by the time of registration.

§ 7. Such deeds and conveyances of personal estate shall be proved or acknowledged as deeds and conveyances of real estate.

§ 8. All deeds, recorded within six months from the date of their execution, shall have force, and be valid and operative between the parties thereto, and subsequent purchasers and creditors; and all deeds recorded after the expiration of six months shall be valid and operative from the date of their registration, as to creditors and subsequent purchasers: *Provided*, That the same shall be valid at all times between the contracting parties thereto.

*Ib. Sec. 2.* Patents for land may be recorded.

Copy of record, evidence.

§ 9. It shall be lawful for any person or persons, having patents for lands in this state, to have the same recorded in the office of the clerk of the county court of the county, where the lands may lie, and a certified copy thereof shall be admitted as evidence in any court in this state; and the record of all patents, heretofore recorded, are hereby legalized, and a certified copy thereof shall be admitted as evidence in any court in this state.

*Ib. Sec. 3.* Six months further allowed for recording deeds. Proviso.

§ 10. It shall be lawful for any person or persons, who have failed to have deeds and conveyances of real or personal estate recorded within the time prescribed by law, to have the same recorded within six months after the passage of this act: *Provided*, That such registration shall not affect the rights of creditors and purchasers which have heretofore vested.

*Ib. Sec. 4.* Former registrations legalized.

§ 11. Deeds heretofore recorded, according to law, but not within the time required, shall be as good and effectual, as if recorded in the time required, except as to creditors or subsequent purchasers without notice.

1828—(44) Preamble.

*Whereas*, the legislature of this state, at the last session thereof, passed two acts,<sup>1</sup> the first on the 11th January, 1828, entitled "An

<sup>1</sup> The two acts immediately preceding. Some sections of those acts would have fallen more properly under a different title, but for the obvious necessity of presenting the two acts entire, in juxtaposition with the explanatory act which follows.



Act more effectually to prevent frauds and fraudulent conveyances," and the other on the 15th January, 1828, entitled "An Act concerning the registration of deeds and patents," the last of which said acts, it hath been contended, repealed the former. To prevent any misconstruction of the true meaning of the aforesaid acts, and that each may have the effect intended, therefore,

§ 12. *Be it enacted, &c.* That the aforesaid act, passed on the 11th January, to prevent frauds and fraudulent conveyances, and for other purposes, shall stand in full force, and the said act of the 15th January, 1828, concerning the registration of deeds and patents shall be held to apply to deeds, wherein the property has been absolutely conveyed, and not upon any trust or condition whatever.

*Sec. 1.*  
The two  
foregoing  
acts explain-  
ed.

## GAMING.

§ 1. ALL promises, agreements, notes, bills, bonds, or other contracts, judgments, mortgages, or other securities, or other conveyances whatsoever, made, signed, given, granted, drawn, or entered, or executed by any person or persons, whatever, after the passing of this act, where the whole or any part of the consideration of such promise, agreement, conveyance, or security, shall be for money, or other valuable thing whatsoever, laid or betted at cards, dice, or at any gaming table, commonly called A B C, or E O, or billiards, or any other table, known or distinguished by any other letters, or by any figures, or rowley-powley table, or any rouge and noir, or at any faro bank, or at any other gaming-table or bank of the same or the like kind, under any other denomination whatsoever, or at any horse-race, cock-fighting, or at any other sport or pastime, or on any wager whatsoever, or for reimbursing or repaying any money knowingly lent or advanced at the time or place of such play, horse-racing, or cock-fighting, or other sport or pastime, to any person or persons so gaming, betting, or wagering, or shall, at such time and place, so play, bet, or wager, shall be utterly void and of no effect, to all intents and purposes whatsoever.<sup>1</sup>

1807—(12)  
Gaming con-  
tracts void.

§ 2. Hereafter, any person wishing to set up and use a billiard-table, for play, within this state, may do the same by obtaining a license from the clerk of the county court, of the proper county, which license the clerk is hereby authorized and directed to grant, on the applicant paying into his hands the sum of one hundred dollars,<sup>a</sup> and one dollar, the clerk's fee, for granting such license: and every billiard-table, the owners and keepers thereof, so set up and licensed, as aforesaid, shall be exempted from all the pains and penalties imposed by any preceding section of this act, for the space of one year from the date of such license: and every clerk, receiving any money, for licensing any billiard-table as aforesaid, shall pay the same into their respective county treasuries, within one month thereafter, under the penalty of two hundred dollars, to be recovered before any court having jurisdiction thereof, upon motion made by the county treasurer, in the same manner as is provided for the recovery of state taxes by the comptroller of public accounts.<sup>b</sup>

1812—(12)  
*Sec. 6.*  
Billiard ta-  
bles to be li-  
censed.

<sup>a</sup>*Sec. "Tax-  
es"—§ 12.*

<sup>b</sup>*Sec. "Penal  
Code," chap.  
6, § 19.*

<sup>1</sup> The money may be recovered back,—See "Penal Code,"—chap. 6, § 17.



*Ib. Sec. 7.*  
Fines, how  
appropriat-  
ed.

*Ib. Sec. 8.*  
Clerks of  
county  
courts to fur-  
nish list of  
billiard ta-  
bles licensed.

1836—(5)

*Sec. 1.*  
Licenses for  
gaming ta-  
bles, prohibi-  
ted.

Penalty for  
keeping  
gaming ta-  
ble.

*Ib. Sec. 2.*  
Duty of  
judges and  
justices.

1836—(37)  
*Sec. 1.*  
Gaming with  
minors, how  
punished.

*Ib. Sec. 2.*  
Any person  
may apprehend offend-  
er.

§ 3. All fines and forfeitures under this act, in all the counties of this state, shall be for the use of the county where the same were paid, or where the fine was imposed.

§ 4. It shall be the duty of the clerks of the county courts, respectively, to furnish the judge of the circuit court, on the first day of each term, a list of the persons having obtained license as aforesaid, within one year preceding said court, and the date of such license; which list, together with this act, shall by the judge be given to the grand jury, in charge, and the grand jury shall present every person who shall have used or set up a billiard-table, without having taken out a license as aforesaid, which person or persons, so presented, shall be tried on said presentment by a petit jury, and fined in such sum as the jury may assess: *Provided*, That the same does not exceed the fines imposed in the first section of this act.

§ 5. It shall not be lawful for any court, clerk, city corporate, town council, or any other authority whatever, within this state, to issue any license or permission to any person or persons, to keep, or cause to be kept, any table, bank, or other invention, by whatever name known or called, used for gaming; and if any person or persons shall, after the passage of this act, by him, her, or themselves, or by his, her, or their agent, keep, or cause to be kept, any such table, bank, or other invention, by whatever name known or distinguished, for the purpose of gaming, or shall permit, or knowingly suffer the same to be kept, for the purpose aforesaid, on his, her, or their premises, he, she, or they, so offending, shall, on conviction thereof upon indictment, be fined in a sum not less than five hundred dollars, nor more than two thousand dollars, and imprisoned not less than two months, nor more than twelve months.

§ 6. It shall be the duty of the judges of the circuit courts, at each term of said courts, to give this act in charge to the grand jury; and it shall be the duty of all justices of the peace to issue their warrant against all who shall offend against this act, and to bind them over to the next term of the circuit court having cognizance of the offence.

§ 7. If any person of mature age, shall gamble and bet at cards, dice, backgammon, billiards, or any other game of hazard, with a minor or person under twenty-one years of age; or suffer any minor to bet at any gaming table, or other device, no matter by what name called, whereby money or any other property or commodity has been won or lost by any minor under the age of twenty-one years; any person so offending shall be fined, on conviction of a jury, in a sum not less than five hundred dollars, and stand in the pillory two hours in each succeeding day for three successive days.

§ 8. Any person of mature age, who may, at any time, or in any place, be found offending against the first section of this act, by betting, gambling, and playing with any minor, under the age of twenty-one years, on any game of hazard, no matter by what name called, whereby money or other thing of value may have been won or lost, such person may be apprehended by any person, and taken before some justice of the peace, whose duty it shall be to inquire into the offence; and if, in his opinion, said offender be guilty of a violation of the first section of this act, it shall be his duty to return said offender to the next circuit court, and require that said offender enter into bond, with good security, in such sum as will secure his appearance at said circuit court; and in case said offender shall fail or refuse to enter into bond and security, as hereby required, said justice may commit him to the common jail of the county, for safe keeping, until such bond shall be executed.



§ 9. It shall be the duty of the several circuit court judges in this state, to give in charge to the grand juries, this act; and all fines incurred under it, shall go, one half into the county treasury, and the other half to the informer. *Id. Sec. 3. Judges to give this act in charge.*

§ 10. On any person being apprehended for a violation of the first section of this act, the witness in such case testifying that in his opinion the appearance of the youth indicates that he is under the age of twenty-one, shall be good and sufficient evidence to convict said offender, unless said offender does prove said youth was over the age of twenty-one. *Id. Sec. 4. Youth appearing under age of 21, good evidence.*

§ 11. If any person or persons shall by him, her, or themselves, or by his, her, or their agent, keep, or permit to be kept, a billiard-table for play, or in a situation to be played on, in his, her, or their house or houses, without first obtaining a license from the county court of the county in which such table may be kept, he, she, or they, shall forfeit and pay the sum of four thousand dollars, to be recovered in any court having jurisdiction thereof, one half to the person suing for the same, and the other half to the state. *1827—(19) Sec. 13. Penalty for keeping an unlicensed billiard-table.*

## GARNISHMENT.

§ 1. WHENEVER a judgment shall have been rendered by any court of record, or any justice of the peace, in this state, and an execution against the defendant or defendants shall have been returned by the proper officer, "No property found;" on the affidavit of the plaintiff, or other credible person, that said defendant or defendants, hath or have no property within the knowledge of such affiant, in his or their possession; and that such affiant hath just reason to believe that another person or persons is or are indebted to such defendant or defendants, or hath or have effects of such defendant or defendants in his or their hands; it shall be lawful for said court, or justice of the peace, to cause the person or persons supposed to be indebted to, or supposed to have any of the effects of, the said defendant or defendants, to be summoned forthwith to appear before said court or justice, as a garnishee or garnishees; and said court, or justice of the peace shall examine and proceed against such garnishee or garnishees, in the same manner as required by law against garnishees in original attachments. *1818—(2) Sec. 3. Garnishee may be summoned on return of execution, "No property found."*

§ 2. On the rendition of a judgment, by any court of record, or justice of the peace, if the plaintiff, or other credible person, make affidavit that the defendant or defendants hath or have no property within the knowledge of such affiant, in his or their possession; and that such affiant hath just reason to believe that another person or persons is or are indebted to such defendant or defendants, or hath or have effects of such defendant or defendants, in his or her hands; it shall be lawful for such court or justice to cause the person or persons, supposed to be indebted to, or supposed to have any of the effects of said defendant or defendants, to be summoned to appear forthwith before such court or justice, as a garnishee or garnishees; and said court or justice shall examine and proceed against such *1818—(14) Sec. 3. or on rendition of judgment, affidavit being made.*

1 The justice may make the garnishment returnable at a day certain, not less than ten, nor more than thirty days from its issuance.—See § 5.



garnishee or garnishees, in the same manner required by law, against garnishees in original attachments.

1823—(11)

Sec. 1.

Oath may be made before clerk, who shall summon garnishee to appear at next term.

§ 3. Whenever, hereafter, on the rendition of judgment, any plaintiff or other credible person shall take the oath required by the foregoing section, before any clerk of the circuit or county court, the said clerk shall issue a summons to the person or persons alleged by said oath to be indebted to, or having effects of said defendant or defendants, in his or their hands, to appear at the next term of the court for which he may be clerk, as garnishee or garnishees; and said court shall examine and proceed against such garnishee or garnishees, in the manner required by law against garnishees in original attachments.

1832—(2)

Sec. 1.

Law extendable to justices a § 3.

§ 4. All the provisions of the before-recited act<sup>a</sup> shall be applicable to justices of the peace, as well as clerks of the circuit and county courts.

Ib. Sec. 2.

Summons by justice returnable to justice.

§ 5. When it shall be necessary for justices of the peace to issue a summons, to garnishee or garnishees, for any sum or sums under the jurisdiction of a justice of the peace, it shall be lawful for such justice, issuing such summons, to make it returnable before him or some other justice of the peace, at some certain place and day, not less than ten nor more than thirty days from the issuance of the same.

§ 6. No garnishee or garnishees whatever, shall be liable, or be condemned and adjudged to pay any costs but after summons and default by such garnishee or garnishees.

Ib. Sec. 3.  
Garnishee liable to costs, only after summons and default.

1837—(1)

Sec. 7.

Summons may issue without oath of garnishee's indebtedness, further than, &c.

§ 7. On the rendition of a judgment by any circuit or county court, or upon any judgment of such court heretofore rendered, it shall be the duty of the clerk of said court,—upon affidavit being made before him by the plaintiff, his attorney or agent, or other credible person, that the defendant or defendants, hath or have not sufficient property within the knowledge of such affiant, in his, her, or their possession, to satisfy said judgment,—to issue a summons to any person or persons, who may be supposed to be indebted, or supposed to have effects of the defendant in his, her, or their hands, to appear as garnishee before said court, at the next term thereof, and within the first four days thereof; or if such application be made, or summons be issued in term time, to appear forthwith; and said court shall proceed against said garnishee or garnishees as in cases of original attachment; and it shall not be necessary, before issuing any such summons of garnishment, for the plaintiff in any judgment, his attorney or agent, to make oath of the supposed indebtedness of any such garnishee, more than that he is supposed to have effects of the said defendant or defendants, in his or their hands or possession.

1841—(15)

Sec. 1.

Writs of garnishment may issue against debtor or stockholder of incorporated company.

§ 8. When any judgment shall have been rendered against any incorporated company, or body corporate, of whatsoever nature or character, in this state, the plaintiff or plaintiffs in such judgment, shall be entitled to the rights and benefits of all the laws now in force, regulating the issuance of writs of garnishment, as well as to such as may be hereafter enacted; and when execution has been issued, and returned "no property," or when it shall appear by the affidavit of the plaintiff, his attorney, or agent, that such company or body corporate, has not, within the knowledge of said affiant, sufficient personal property to satisfy such judgment, the clerk of the court in which such judgment may have been rendered, shall,—upon affidavit of the plaintiff, his attorney or agent, that he believes certain persons (naming them) are indebted to such company as stock-



holders, or otherwise,—issue summons of garnishment against such person or persons, returnable to the next court, requiring such garnishee to answer what he is indebted as stockholder or otherwise, as now provided by law; and stating, that upon his failure to do so, judgment “*nisi*” will be rendered against him for plaintiff’s demand.

§ 9. The stockholders of any incorporated company, or body corporate in this state, shall be liable, respectively, to the creditors of such company, for the amount of stock subscribed by them, and unpaid, in character of debtors to such corporation, and such liability may be enforced by garnishment, as above provided for, in this bill.

§ 10. The stockholder of any company, compelled to pay the whole, or any part, of the debts of the company of which he is a member, shall have the right of, and be deemed, an assignee of the judgment, or so much thereof as shall have been paid by him, and shall be entitled to the remedy provided by law, for co-securities, to compel contribution from the other stockholders, or any of them: *Provided*, That the provisions of this act shall not be applied to the Bank of the State of Alabama, and its several branches, nor to the debtors thereof.

NOTE.—Garnishees in attachment—See “Attachment.”

## GENERAL ASSEMBLY.

§ 1. THE legislative power of this state shall be vested in two distinct branches: the one to be styled “The Senate,” and the other “The House of Representatives,” and both together “The General Assembly of the State of Alabama,” and the style of their laws shall be, “Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened.”

§ 2. The members of the house of representatives shall be chosen by the qualified electors, and shall serve for the term of one year, from the day of the commencement of the general election, and no longer.

§ 3. The representatives shall be chosen every year, on the first Monday and the day following in August, until otherwise directed by law.<sup>1</sup>

§ 4. No person shall be a representative, unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof, a resident of the county, city, or town, for which he shall be chosen, and shall have attained the age of twenty-one years.

§ 5. Senators shall be chosen by the qualified electors, for the term of three years, at the same time, in the same manner, and at the same places, where they may vote for members of the house of representatives; and no person shall be a senator, unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this state two years next preceding his election,

<sup>1</sup> The first Monday in August only.—See “Elections,” § 25.



and the last year thereof a resident of the district for which he shall be chosen, and shall have attained to the age of twenty-seven years.

*Sec. 13.*  
Classifica-  
tion of sena-  
tors.

§ 6. The senators, chosen according to the apportionment, under the census ordered to be taken in one thousand eight hundred and twenty-six, when convened, shall be divided by lot into three classes, as nearly equal as may be. The seats of the senators of the first class shall be vacated at the expiration of the first year, those of the second class at the expiration of the second year, and those of the third class at the expiration of the third year, so that one-third may be annually chosen thereafter, and a rotation thereby kept up perpetually. Such mode of classifying new additional senators shall be observed as will, as nearly as possible, preserve an equality of members in each class.

*Sec. 14.*  
Each house  
to elect its  
officers, and  
judge of  
qualifica-  
tions, &c. of  
its own  
members.

§ 7. The house of representatives, when assembled, shall choose a speaker, and its other officers; and the senate shall, annually, choose a president and its other officers: each house shall judge of the qualifications, elections, and returns of its own members: but a contested election shall be determined in such manner as shall be directed by law.

*Sec. 15.*  
Quorum.

§ 8. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

*Sec. 16.*  
Powers of  
each house.

§ 9. Each house may determine the rules of its own proceedings, punish members for disorderly behavior, and, with the consent of two-thirds, expel a member; but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state.

*Sec. 17.*  
Punishment  
for contempt

§ 10. Each house, during the session, may punish, by imprisonment, any person not a member, for disrespectful or disorderly behavior in its presence, or for obstructing any of its proceedings: *Provided*, That such imprisonment shall not, at any one time, exceed forty-eight hours.

*Sec. 18.*  
Journal of  
proceedings.  
Yeas and  
nays.

§ 11. Each house shall keep a journal of its proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of any two members present, be entered on the journals.

*Protest.*

And any member of either house shall have liberty to dissent from or protest against any act or resolution, which he may think injurious to the public or an individual, and have the reasons of his dissent entered on the journals.

*Sec. 19.*  
Members  
privileged  
from arrest.

§ 12. Senators and representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to, and returning from the same; allowing one day for every twenty miles such member may reside from the place at which the general assembly is convened; nor shall any member be liable to answer for anything spoken in debate in either house, in any court or place elsewhere.

*Sec. 20.*  
Vacancies,  
how filled.

§ 13. When vacancies happen in either house, the governor, or the person exercising the powers of the governor, shall issue writs of election, to fill such vacancies.

*Sec. 21.*  
Doors kept  
open, except  
when.

§ 14. The doors of each house shall be open, except on such occasions as, in the opinion of the house, may require secrecy.



§ 15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting. Sec. 22. Adjournments.

§ 16. Bills may originate in either house, and be amended, altered, or rejected by the other; but no bill shall have the force of a law, until on three several days, it be read in each house, and free discussion be allowed thereon, unless, in cases of urgency, four-fifths of the house in which the bill shall be depending, may deem it expedient to dispense with this rule: and every bill, having passed both houses, shall be signed by the speaker and president of their respective houses: *Provided*, That all bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject them as other bills. Sec. 23. Bills, how to originate. Revenue bills.

§ 17. Each member of the general assembly shall receive from the public treasury, such compensation for his services as may be fixed by law; but no increase of compensation shall take effect, during the session at which such increase shall have been made. Sec. 24. Compensation of members.

§ 18. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which shall have been increased, during such term; except such offices as may be filled by elections by the people. Sec. 25. Members not eligible to certain offices.

§ 19. No person, holding any lucrative office under the United States, (the office of post-master excepted,) this state, or any other power, shall be eligible to the general assembly: *Provided*, That offices in the militia to which there is attached no annual salary, or the office of justice of the peace, or that of the quorum or county court, while it has no salary, shall not be deemed lucrative. Sec. 26. What offices disqualify persons from being members.

§ 20. No person, who may hereafter be a collector or holder of public moneys, shall have a seat in either house of the general assembly, or be eligible to any office of trust or profit under this state, until he shall have accounted for, and paid into the treasury, all sums for which he may be accountable. Sec. 27. Public defaulters disqualified.

§ 21. The first session of the general assembly shall commence on the fourth Monday in October next, and be held at the town of Huntsville, and all subsequent sessions at the town of Cahawba, until the end of the first session of the general assembly, to be held in the year one thousand eight hundred and twenty-five; during that session the general assembly shall have power to designate by law (to which the executive concurrence shall not be required) the permanent seat of government, which shall not thereafter be changed. Sec. 29. Where held until 1825.

§ 22. The town of Tuskaloosa is hereby designated as the permanent seat of government; and from and after the end of the present session of the general assembly, the sessions of the said general assembly shall be held in the said town of Tuskaloosa. 1826—(1) Sec. 1. Sessions to be held at Tuskaloosa.

§ 23. The general assembly of this state shall convene on the first Monday in December, in each and every year. 1841—(16) Sec. 1. Time of convening.

§ 24. In all elections by the general assembly, the votes shall be given for one election only, at the same time: a majority of the whole number of votes shall be necessary to a choice:—the members of both houses will assemble in the representative chamber, and the names of the members of each house shall be called by their respective clerks; whereupon the president of the senate and speaker of the house of representatives shall ascertain the result, which shall be announced by the speaker of the house of representatives. 1821—(1) Sec. 1. Elections by the general assembly.



1833—(30)

Sec. 1.

Members not  
eligible to  
certain offi-  
ces.

a Sec § 35.

1821—(8)

Sec. 1.

Compensa-  
tion of mem-  
bers.

§ 25. It shall not be lawful for any member of the general assembly of the state, to be elected to any office of honor, trust or profit, during the time for which he is elected, which office is filled by a joint vote of the two houses of the general assembly.<sup>a</sup>

§ 26. The president of the senate, and speaker of the house of representatives, shall be entitled to receive six dollars per day; and each other member shall receive four dollars for every day's attendance at the general assembly, and shall be allowed four dollars for every twenty miles traveling to and from the general assembly, and in that proportion for a shorter distance; and if any member shall be detained by sickness after leaving home, in coming to, or be unable to attend the house after he arrives at, the place where the general assembly shall sit, he shall be entitled to the same daily allowance of an attending member.

Ib. Sec. 2.

Of clerks and  
door-keepers

§ 27. The clerk of the house of representatives, and the secretary of the senate, each, shall be allowed seven dollars per day; the assistant clerks of each branch of the legislature, five dollars per day; the door-keepers, one to each house, four dollars per day.

1812—(22)

Sec. 4.

Compensa-  
tion due, to  
be certified  
by presiding  
officer.

§ 28. The compensation, which shall be due to the members and officers of the general assembly, shall be certified by their president and speaker, respectively, to the comptroller of public accounts, who shall issue his warrant therefor, on the state treasurer, which shall be paid out of the state treasury.

1820—(10)

Sec. 1.

Secretary of  
state to pre-  
serve the re-  
cords of gen-  
eral assem-  
bly.

§ 29. It shall be the duty of the secretary of state, at, or soon after, the close of each general assembly, to deposit in his office all the records and papers necessarily belonging to the legislature; which shall be determined by an examination, made by the secretary of state, secretary of the senate, and clerk of the house of representatives, who are hereby appointed commissioners for that purpose.

1823—(16)

Sec. 1.

Engrossed  
copies of  
laws.

§ 30. The chairman of the enrolling committee shall be required to preserve the engrossed copies of all laws and joint resolutions, which may be passed by the legislature, and file them with the secretary of state.

1827—(25)

Sec. 1.

Clerk of H.  
R. to arrange  
and file with  
secretary of  
state, all  
papers relat-  
ing to unfin-  
ished busi-  
ness, &c.

§ 31. Within ten days after the adjournment of each session of the legislature, it shall be the duty of the clerk of the house of representatives, to assort all the papers and documents relating to the unfinished business of the session, and arrange them into convenient files, in the following manner, viz: 1st. All petitions, with the accompanying documents, to be arranged, put up, and filed, in alphabetical order, and tied up in convenient bundles, with a label on each bundle, showing the number contained in it. 2dly. All bills rejected on the first reading, to be numbered, filed, and labeled in like manner, and so of bills rejected on the second and third reading, the label in every instance showing the number of bills contained in each bundle, and the reading at which it was rejected. 3dly. All communications from the governor, the bank, the comptroller and treasurer, which shall have been received during the session and not entered at length on the journal, shall be filed and labeled, in separate bundles, for each department, if sufficiently numerous to require it. 4thly. Reports from standing and select committees, shall be arranged, filed, and labeled in like manner, the label, in all instances, showing the session to which the papers appertain, by marking the date. And should there be other papers not comprehended under either of the foregoing heads, they shall be arranged and filed as miscellaneous papers, and labeled according to their nature, for the convenience of future reference; and the papers so arranged, filed,



and labeled, shall be delivered to the secretary of state for safe keeping.

§ 32. It shall be the duty of the secretary of the senate, within the same time, to arrange, file, and label the papers in his office at the close of each session, according to the directions contained in the first section of this act, in relation to the papers of the house of representatives, and in like manner, to deliver them to the secretary of state.

§ 33. It shall be the duty of the secretary of state, to receive the papers so filed and labeled from the said clerk and secretary, and keep and preserve them in his office, keeping the papers of each house separate from those of the other, and allow them to be inspected, and to furnish copies when required, on receiving the fees allowed for similar services; and it shall be his duty to certify that the said clerk and secretary have respectively complied with the requisitions of this act, which certificate shall be necessary to entitle them to the compensation allowed for the services herein required; and if either the said clerk or secretary shall fail to arrange the papers of his office, according to the directions of this act, it shall be the duty of the secretary of state to withhold the said certificate, until they shall be so arranged and filed.

§ 34. The secretary of state is hereby authorized and required to purchase, annually, in Philadelphia, Baltimore, or New York, by order, the necessary books and stationery for the several departments of state, and for the general assembly, and the comptroller shall issue his warrant, for the sum or sums necessary for the purposes aforesaid.

§ 35. The provisions of an act, entitled "An Act to preclude from office certain persons therein named," approved January 12th, 1833, shall not be so construed as to prevent the election of a member of the general assembly to the office of Judge of the county court of the several counties of this state.

NOTE.—For the oaths to be taken by members of the general assembly, and the manner of administering them,—See "Oaths Official."

## GOVERNOR.

§ 1. THE supreme executive power of this state shall be vested in a chief magistrate, who shall be styled "The Governor of the State of Alabama."

§ 2. The governor shall be elected by the qualified electors at the time and places when they shall respectively vote for representatives.

§ 3. The returns of every election for governor shall be sealed up, and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall, during the first week of the session, open and publish them in presence of both houses of the general assembly. The person having the highest number of votes shall be governor, but if two or more shall be equal and highest in votes, one of them shall be chosen governor by the joint vote of both houses. Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law.



Term of  
service.

Qualifica-  
tions.

Compensa-  
tion.

Commander  
of militia,  
&c.

May require  
information  
of executive  
officers.

Convening  
and adjourn-  
ing general  
assembly.

Give inform-  
ation to gen-  
eral assem-  
bly.

Execution of  
laws.  
His powers  
in criminal  
cases.

Sec. 18.  
In case of va-  
cancy, presi-  
dent of sen-  
ate to admin-  
ister govern-  
ment.

Sec. 19.  
If he vacate,  
speaker of H.  
R. shall act.

Sec. 21.  
Governor,  
where to re-  
side.

Sec. 22.  
Not to hold  
any other  
office.

§ 4. The governor shall hold his office for the term of two years from the time of his installation, and until his successor shall be duly qualified, but shall not be eligible for more than four years in any term of six years; he shall be at least thirty years of age, shall be a native citizen of the United States, and shall have resided in this state at least four years next preceding the day of his election.

§ 5. He shall at stated times, receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected.

§ 6. He shall be commander-in-chief of the army and navy of this state, and of the militia thereof, except when they shall be called into the service of the United States. And when acting in the service of the United States, the general assembly shall fix his rank.

§ 7. He may require information in writing from the officers of the executive department, on any subject relating to the duties of their respective offices.

§ 8. He may, by proclamation, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious disorders: in case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next annual meeting of the general assembly.

§ 9. He shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

§ 10. He shall take care that the laws be faithfully executed.

§ 11. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In cases of treason he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons; and he may, in the recess of the senate, respite the sentence, until the end of the next session of the general assembly.

§ 12. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the president of the senate shall exercise all the power and authority appertaining to the office of governor, until the time pointed out by this constitution for the election of governor shall arrive, unless the general assembly shall provide by law for the election of a governor to fill such vacancy, or until the governor absent or impeached shall return or be acquitted.

§ 13. If, during the vacancy of the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the house of representatives shall in like manner administer the government.

§ 14. The governor shall always reside, during the session of the general assembly, at the place where their session may be held, and at all other times, wherever, in their opinion, public good may require.

§ 15. No person shall hold the office of governor, and any other office or commission, civil or military, either in this state, or under any state, or the United States, or any other power, at one and the same time.



§ 16. During the recess of the general assembly, it shall be law-  
ful for the governor of this state to leave the seat of government,  
whenever, in his opinion, the duties of his office do not require him  
to remain at the same.

1843—(22)  
Sec. 1.  
Need not re-  
side at seat  
of govern-  
ment during  
recess.

NOTE.—Governor's salary, \$2,500.—See "Salaries."

GUARDIANS.

NOTE.—Some portion of the law respecting Guardians, has been unavoidably  
inserted under the head of "Executors and Administrators."

§ 1. THE judge of the orphans' court, in each county, when and  
so often as there shall be occasion, is hereby empowered, to allow  
of guardians that shall be chosen by minors of fourteen years of age,  
and it shall be lawful for the said court to appoint guardians for such  
as shall be within, or under that age. When any minor, above four-  
teen years of age, shall be cited by the said judge to choose a guar-  
dian, and such minor shall refuse or neglect to appear, or when ap-  
pearing, shall refuse to choose a guardian, or any guardian chosen  
by such minor shall be unable to give sufficient security, or shall  
refuse the trust; in every such case the orphans' court shall have  
the same power to appoint a guardian, as though such minor was  
under the age of fourteen years: *Provided, nevertheless*, That when  
a minor, above the age of fourteen years, shall choose a guardian,  
such minor may have that choice certified to the said judge by a  
justice of the peace in the same county; which choice so certified,  
shall be deemed as good and valid, as if done in presence of the said  
judge.

1806—(1)  
Sec. 44.  
Appoint-  
ment of  
guardians.

§ 2. Every orphans' court, appointing a guardian to a minor, of  
his or her own election, shall take bond of such guardian, with good  
securities, in a sufficient sum, for the faithful execution of his office  
and trust.<sup>1</sup> (1)

*Ib.* Sec. 45.  
Guardians to  
give bond.

§ 3. Every guardian in socage, or other guardian, shall, within  
three months after his appointment and acceptance of such office, de-  
liver into the office of the register of the orphans' court an invento-  
ry, on oath, of all the estate, real and personal, which he shall have  
received, or taken possession of, to be entered of record; and shall  
exhibit once in every year, and oftener if thereunto lawfully required,  
an account of the product of the said estate, and of the sale and dis-  
position of such product, and disbursements: which accounts being  
examined and audited by the judge in the same manner as executors'  
or administrators' accounts, and reported, fairly stated and supported  
by vouchers, and approved of by the court, shall be recorded in the  
clerk's office.<sup>2</sup>

*Ib.* Sec. 46.  
Guardians to  
return in-  
ventory of  
estate, and  
report  
accounts.

§ 4. Any guardian who shall not deliver in such inventory, or  
render such account, shall, by order of the orphans' court, to which

*Ib.* Sec. 47.  
Guardians  
defaulting,

(1) Several points of pleading settled with regard to actions on guardians'  
bonds. *Davis v. Dickson, et al.*, 2 *Stewt. Rep.* 370.

<sup>1</sup> All guardians are required to give bond. See "Executors and Administra-  
tors,"—§ 3. "Judiciary—County Court," § 28, 29.

<sup>2</sup> Guardians refusing to settle, when cited, may be attached. See "Executors  
and Administrators," § 28.



may be displaced. he is answerable, be summoned, and if he remain in default, compelled to perform his duty, or be displaced. And the said court may, for any good and sufficient cause, displace a guardian, giving such guardian fourteen days' previous notice, by citation, to appear and show cause why he should not be displaced.

*Ib. Sec. 48.* Court may require additional security of guardians. § 5. The orphans' court, when they at any time shall know or have cause to suspect, that the securities of a guardian or any of them, are in failing or dubious circumstances, may require and compel such guardian to give additional security or securities; and if he refuses or neglects so to do, may displace him.

*Ib. Sec. 49.* Proceedings when ward's estate is insufficient for his maintenance. § 6. If the personal estate, and rents and profits of the real estate, be not sufficient for the maintenance and education of the ward, the orphans' court, on full investigation thereof, may, from time to time, order the guardian to sell such parts of the ward's lands, tenements, and hereditaments, as they shall direct and judge adequate to his or her maintenance and education.

*Ib. Sec. 50.* Proceedings on the sale of lands by guardians. § 7. The lands, tenements, and hereditaments, so ordered to be sold, shall be advertised by the guardian in three of the most public places in the county, and in some public newspaper in this state, for the space of forty days previous to the time appointed for the sale thereof; and the guardian, at the time and place so advertised, shall sell the same at public vendue, upon a credit of twelve months after the day of sale, to the highest bidder, who shall give bond with satisfactory security for the amount thereof; and shall make report in writing, of his proceedings thereon, to the next orphans' court after such sale: *Provided*, That the said guardian may adjourn the said sales from time to time, at his discretion. And said guardian shall make a deed to the purchaser for the lands, tenements, and hereditaments so sold; which deed shall vest in the said purchaser, as good and perfect an estate in the premises therein mentioned, as the ward was seized of or entitled to, at the time of making the said order.

Guardian's deed valid.

*b. Sec. 52.* Guardians' duty to idiots, &c. § 8. It shall be the duty of the guardians of idiots, lunatics, and persons *non compos mentis*,<sup>1</sup> to improve frugally, and without waste or destruction, their estates, and apply the income and profits thereof to the comfortable maintenance and support of such idiot, lunatic, or person *non compos mentis*, and of his household or family, (if any there be); and the said guardian or guardians are hereby empowered to collect, sue for, and recover, all just debts due to such idiot, lunatic, or person *non compos mentis*; and they shall also be subject to the payment of all just debts owing by such person, which were contracted when he or she was of sound mind, and before his or her distraction or lunacy, out of the personal estate; or if that be insufficient, then out of the real estate, in such way and manner as executors and administrators may by law discharge the debts of deceased persons, when the personal estate of such deceased is insufficient. And the said guardian or guardians shall have the same power and authority, by order of the orphans' court, to sell the lands, tenements, and hereditaments of any idiot, lunatic, or person *non compos mentis*, for the purpose aforesaid, as by this act is given to executors and administrators in similar cases, observing the same rules and restrictions. And the deed or deeds of conveyance of such

In certain cases may sell real estate.

<sup>1</sup> For the mode and occasion of appointing such guardians,—See "Judiciary—County Court,"—§ 29, 30, and note.



guardian or guardians, shall have the same force, effect and validity, to all intents and purposes.<sup>1</sup>

§ 9. If any such idiot, lunatic, or person *non compos mentis*, shall be restored to the use of his or her reason, and sanity of mind, (and on application, the same be made to appear to the orphans' court, who shall judge thereof,) the residue of his or her estate, both real and personal, shall be returned and delivered to him or her, the guardian or guardians, having such reasonable allowance for his or their charge and trouble, as the court shall order.

*Id. Sec. 53.*  
Idiots, &c.  
becoming  
sane, to re-  
sume their  
estates.

§ 10. Any father, even if he be not twenty-one years of age, may, by last will and testament, executed in the presence of two credible witnesses, devise the custody and tuition of his child, (which had never been married,) although it be not born, during any part of the infancy of such child, to whomsoever he will; and such devise shall give the devisee the same power over the person of the child as a guardian in common socage hath, and authorize him, by actions of ravishment of ward, or trespass, to recover the child, with damages for the wrongful taking or detaining of him or her, for his or her use; and for the same use to undertake the care and management, and receive the profits of the ward's estate, real and personal, and prosecute and maintain any such actions and suits concerning the same, as a guardian in common socage may do.

1822—(19)  
*Sec. 1.*  
Fathers may  
devise the  
custody and  
tuition of  
their infant  
children.

§ 11. Any guardian so appointed by the last will and testament of any person, shall appear openly in the county court, in which last wills and testaments are required by the existing law to be proved and recorded, before the exercise of any authority over the minor or his estate, and declare his acceptance of the guardianship, which shall be recorded; and shall give such bond and security, and in like manner, as is now required by law from guardians appointed by the county courts; and shall deliver an inventory on oath, of all the estate, real and personal, which he shall have received or taken possession of, within the same time after his acceptance of such office, and to the office of the same court to which other guardians are required by law to deliver inventories of the estates of their wards: *Provided*, That no child, the custody and tuition of which shall be devised as aforesaid, shall be taken from the mother of such child, before it attains the age of fifteen years; unless in the opinion of the court to which such guardian may be accountable, it would be improper for the mother to retain the possession of any such child.

*Id. Sec. 2.*  
Guardian  
must declare  
acceptance  
in open  
court,

give bond,  
and deliver  
inventory.

*Proviso.*

§ 12. The said guardians appointed as aforesaid, shall account as often, and under the same regulations, as other guardians are, by law, directed to account, and shall, for failure to deliver an inventory as aforesaid, or to account agreeably to law, be liable to be proceeded against, and to removal from office, as other guardians.

*Id. Sec. 3.*  
To account  
as other  
guardians,  
&c.

§ 13. If any guardian shall fail or neglect to appear in the county court where such last will and testament shall be proved and recorded, within the space of six months thereafter, he may be summoned and compelled to declare his acceptance or renunciation of such trust; and if every such guardian appointed by any such last will and testament, shall renounce the same, which renunciation shall be recorded, the said court may and shall proceed to appoint and

*Id. Sec. 4.*  
Guardians  
may be com-  
pelled to de-  
clare accept-  
ance, or re-  
nunciation  
of guardian-  
ship.

<sup>1</sup> A considerable portion of the law here referred to has been repealed: but equivalent provisions will be found under the titles "Estates of Deceased Persons," and "Executors and Administrators."



qualify some other person or persons to the guardianship, as if no such appointment of a guardian or guardians had ever been made.

1836—(14)  
Sec. 1.  
County  
court may  
permit guar-  
dian to keep  
together  
ward's per-  
sonal estate,  
&c.

Ib. Sec. 2.  
Such guardi-  
an to make  
annual re-  
turn of pro-  
ceeds.

Ib. Sec. 3.  
To give fur-  
ther bond.

1837—(11)  
Sec. 1.  
Guardian  
may remove  
personal  
property to  
another  
state—on  
what condi-  
tions.

Ib. Sec. 2.  
Upon order  
of removal,  
the security  
of the guard-  
ian discharg-  
ed.

Ib. Sec. 3.  
Evidence  
may be taken  
by deposition

§ 14. It shall be lawful for the county court, having jurisdiction of the case, upon sufficient cause being shown, to authorize any guardian of the estate of any minor, idiot, lunatic, or other person *non compos mentis*, to keep together the personal estate of his or her ward or wards, and to employ the same in or for the purpose of agriculture, upon the land of such ward or wards.

§ 15. Such guardian shall make annual returns to the county court having jurisdiction of the estate, of the manner in which such estate has been managed, of the proceeds of the crop made, of the expenses incurred in establishing or carrying on the plantation, of the disposition of all moneys received from the estate, &c.; and on failure to do so, it shall be the duty of such court, to enforce such report by process of attachment.

§ 16. The judges of the county court aforesaid, shall require and take from every such guardian such further bond, with security, as he may consider proper, in each case, for the faithful performance of his or her duty as guardian aforesaid.

§ 17. Letters of guardianship, that have heretofore, or may be hereafter, granted by any court of this state, having jurisdiction of the person and estate, or of the estate only, of any infant under the age of twenty-one years, and the guardian, to whom letters of guardianship have or may be granted, shall desire to remove the personal property and estate of such infant to another state, it shall be lawful for him to do so, upon first making a full and final settlement of his guardianship with the proper court in this state, in the manner now prescribed by law; and upon producing to said court a transcript of the record of the grant of letters of guardianship to him or other person or persons, (including a copy of the bond given, and such other proceedings as may have been had, in obtaining the same of the person and estate of said infant,) by a court of competent jurisdiction, of the state to which such removal is desired and proposed to be made, certified according to the laws of the United States, to be filed and recorded in said court in this state; and by further producing to said court satisfactory evidence that the security given in the state to which such removal is desired to be made, is good and sufficient for the amount of the bond, signed by them; and that said bond is at least of double the amount of the value of the property and estate proposed to be removed; and that the said guardian, as well as the ward, whose property and estate he desires to remove, are inhabitants of, and reside in the state, to which such removal is desired to be made.

§ 18. Upon the first section of this act being fully complied with, by any guardian desiring to remove the property and estate of his ward from this state, as therein provided for, the judge of the proper court in this state shall make an order, reciting such compliance and authorizing such removal; whereupon, the security of such guardian in this state, shall be discharged from further liability in relation to the property and estate of the ward so authorized to be removed.

§ 19. Any evidence, required to be taken under the first section of this act, where the witnesses reside out of this state, may be taken by deposition, upon affidavit being first made, that said witnesses are material and credible, which affidavit shall be made before the clerk of the proper court in this state, who shall, thereupon, issue a commission to take such deposition; and no notice of the time and place of taking thereof need be given.



§ 20. In all cases, where any guardian and his ward may both be non-residents of this state, and such ward may be entitled to property of any description in this state, such guardian, on producing satisfactory proof to the judge of the county court, of the proper county, by certificates according to the acts of congress, in such cases, that he has given bond and security, in the state in which he and ward reside, in double the amount of the value of the property, as guardian, &c.; and it is found, that a removal of such property will not conflict with any terms or limitations attending the right by which the ward owns the same; then, any guardian may demand, receive, or sue for, and remove any such property to the place of the residence of himself and ward.

1839—(19)  
Sec. 1.  
When guardian and ward both reside in another state, how guardian shall proceed to obtain ward's property.

§ 21. When such non-resident guardian shall produce an exemplification, under the seal of office, if there be a seal of the proper court in the state of his residence, containing all the entries of record in relation to his appointment, giving bond, &c., and authenticated as required by act of congress as aforesaid; the judge of the county court of the proper county of this state, either in vacation, at a special sitting or in term time, may cause suitable orders to be made, discharging any resident guardian, executor, administrator, &c., and authorizing the delivery and passing over of such property; and also, requiring receipts to be passed and filed, if deemed advisable. Such judge may also enforce any such orders in any of the modes prescribed by law: *Provided*, The benefits of this act shall not be extended to the citizens of any state, in which a similar act does not now exist, or may not hereafter be passed; *And provided, also*, That property may be removed from one county to another in this state, under the restrictions prescribed in this act, so far as applicable, an exemplification, simply, of the record under the clerk's hand and seal, being sufficient; and in all cases, thirty days' notice shall be given to the resident guardian of the proper county or state, of the intended application for the appointment, and application for the order of removal. And the court shall, and may, reject the application, and refuse such order, whenever it is satisfied, it is not for the interest of the heir, lunatic, minor, &c., that such removal shall take place.

*Id.* Sec. 2.  
Judges, &c. may discharge guardian in this state, and deliver ward's property to guardians of another state.

On what conditions.

§ 22. Whenever there may be any minor, in any county, for whom no well qualified person can be procured to act as guardian, the judge of the county court shall appoint the sheriff of the county, guardian, who shall be required to take the guardianship of such minor.

1840—(24)  
Sec. 1.  
Sheriff to be guardian of minors in certain cases.

§ 23. The guardianship of all minors, as provided for in the first section, shall attach to the office and not to the person of sheriff, and it shall be the duty of the judge of the county court to require of the sheriff additional bond and security, whenever in his opinion, it may be necessary or proper.

*Id.* Sec. 2.  
Such guardianship to attach to office, and not person, of sheriff.

§ 24. Whenever any well qualified person can be procured to take the guardianship of any minor, to whom the sheriff may have been appointed guardian, under the first section, it shall be the duty of the judge of the county court to discharge the sheriff, and give the guardianship to such other well qualified person.

*Id.* Sec. 3.  
Sheriff discharged, when.

§ 25. When any guardian desires to remove the property or estate of his ward, from one county to another in this state, and continue to be the guardian of such ward, he or she shall be permitted to make such removal of the property or estate of the ward, according to the provisions of the act to which this is an amendment: *Provided*,

1843—(23)  
Sec. 1.  
Guardian may remove property from one county to another.

<sup>a</sup>See ante § 21



That the thirty days' notice, in said act mentioned, shall not in such case be necessary.

1843—(61)  
Sec. 1.  
Judges &c.  
to appoint  
guardians for  
estates of  
minors,  
whose fa-  
thers are  
alive.

§ 26. The judges of the several county courts in this state shall be empowered and required, to appoint guardians for the estates of those minors, in their respective jurisdictions, whose fathers may be still alive, but who have separate estates devised to and settled upon them; and all duties, responsibilities and incidents, shall attach to such guardianships, that now attach and belong to guardianships in other cases: *Provided*, That such guardian shall exercise no control over the person of his ward, during the life time of either of his or her parents.

## INCORPORATED TOWNS.

1813—(9)  
Warrants for  
breach of by-  
laws, return-  
able forth-  
with.  
1843—(24)  
Sec. 1 & 2.  
Corporate  
authorities  
may tax tran-  
sient mer-  
chants.

§ 1. ANY precept or warrant, issued for any fine or penalty incurred by the breach of any of the by-laws of any incorporated city or town in this state, may be made returnable forthwith.

§ 2. The corporate authorities of the incorporated cities and towns of this state, shall have power to levy the same tax on itinerant or transient merchants, who remain in said corporation less than one year, as is levied on permanent merchants; which tax shall be sued for and collected at any time the corporate authorities may direct.

## INDIANS.

1832—(7)  
Sec. 4.  
Indians may  
perpetuate  
testimony,  
record wills,  
&c.

§ 1. ALL Indians, or persons of mixed blood, descended of Indians, within the limit of the state of Alabama, may, within the county of their residence, have all the privileges of perpetuating testimony, recording wills and bills of sale and conveyances, with the testimony of such persons beforementioned, as white persons have in their respective counties with white testimony.

*Ib.* Sec. 9.  
Proof in  
suits.

§ 2. In all cases, where suit is brought on contracts hereafter made, to recover money or property from any Indian, the consideration shall be proved by two credible witnesses.

## INSOLVENT DEBTORS.

Con. Ala.  
Art. 1.  
Sec. 18.  
Debtors,  
when dis-  
charged.  
1807—(21)  
Sec. 23.  
How insol-  
vent debtors  
may be dis-  
charged from  
confinement.

§ 1. THE person of a debtor, where there is not strong presumption of fraud, shall not be detained in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

§ 2. For the relief of insolvent debtors, who shall be taken in execution, and to prevent the long imprisonment of unfortunate people, which can be of no benefit, but rather a disadvantage to their creditors: *Be it enacted*, That if any person shall be taken or charged in execution in any suit, commenced or prosecuted in any court of record within this state, it shall be lawful for any judge of the said



court, or of the court of that county or corporation, to whose jail such person shall be committed, by warrant under his hand and seal, to command the jailer or keeper of the said prisoner, to bring before the said court,—if sitting, or if not sitting, in case it be a superior court, before any one judge of the said court, at a certain time and place therein to be appointed, and if an inferior court, before any judge of said court, at their county court-house, likewise on a certain day to be appointed in such warrant,—the body or bodies of such person or persons so in prison as aforesaid, together with a list of the several executions, with which he or she shall stand charged in the said jail, which warrant such jailer is hereby required to obey; and ten days' notice<sup>1</sup> thereof shall be given to the party or parties, or their executors, administrators, or agents, at whose suits such prisoner or prisoners shall be in execution; and every such prisoner coming before the said court or judge, as the case shall be, shall subscribe and deliver in a schedule of his whole estate, and make oath and swear to the effect following, that is to say: "I, A. B., do, in the presence of the Almighty God, solemnly swear (or affirm, as the case may be,) that the schedule now delivered, and by me subscribed, doth contain, to the best of my knowledge and remembrance, a full, just, true, and perfect account and discovery of all the estate, goods, and effects, to me in any ways belonging, and such debts as are to me owing, or to any person in trust for me, and of all securities and contracts whereby any money may hereafter become payable, or any benefit or advantage accrue to me, or to my use, or to any other person or persons in trust for me; and that I, or any other person or persons, in trust for me, have not land, money, stock, or any other estate, real or personal, in possession, reversion, or remainder, of the value of the debt or debts with which I am charged in execution; and that I have not, directly or indirectly, sold, lessened, or otherwise disposed of, in trust, or concealed all or any part of my lands, money, goods, stock, debts, securities, contracts, or estate, whereby to secure the same, or to receive or expect any profit or advantage therefrom, or to defraud or deceive any creditor or creditors to whom I am indebted, in any wise howsoever: So help me God." Which schedule being so subscribed in open court, if taken in court, and if not, in the presence of the judge, shall be returned to the clerk of the court, there to remain for the better information of the creditor; and after delivering in such schedule, and taking such oath, and delivering up all evidences of debt in his possession, and orders for such as are not in his possession,<sup>a</sup> such prisoner shall be discharged by warrant from such court, or from the judge, (as the case may be,) which warrant shall be sufficient to indemnify such sheriff or officer, against any escape or escapes, action or actions, whatsoever, which shall or may be brought, or prosecuted against him or them, by reason thereof; and if any action shall be commenced against any sheriff or officer, for performing his duty in pursuance of this act, he may plead the general issue, and give this act in evidence: *Provided, always,* That, notwithstanding such discharge, it shall be lawful for any creditor or creditors, by judgment, at any time afterward, to sue out a writ of *feri facias*, to have an execution against any lands or tenements, goods or chattels, which such insolvent person shall thereafter ac-

Schedule of debtor's effects to be rendered on oath.

[s1833—(18) Sec. 1.]

Property subsequently acquired, liable to execution.

<sup>1</sup> The prisoner may be discharged without notice, when the plaintiff in execution lives in another county, and has not appointed an agent in the county of the defendant's residence.—See "Executions,"—§ 82.



Debtors in the bounds, may have the benefit of this act.

a Sec § 12.

Ib. Sec. 24.  
Sheriff to sell property.

Penalty on sheriff for failure to pay over.

Ib. Sec. 25.  
Debts, or property in possession of another, how recoverable.

quire, or be possessed of; but no person, delivering in such schedule and having taken the said oath, shall again be imprisoned on account of any judgment, which shall have been obtained against him previous to the time of taking such oath, unless by virtue of a *capias ad satisfaciendum*, directed to issue by the court in which the said judgment shall have been rendered; *And provided, also*, That any person, confined within the limits of any prison bounds, shall be entitled to the benefit of this act, in the same manner, and under the same regulations, as those confined in jail; and all bonds, given for the keeping of the said prison bounds, shall be null and void, after such prisoner shall be so discharged.<sup>a</sup>

§ 3. All the estate which shall be contained in such schedule, and any other estate which may be discovered to belong to the prisoner, or such interest therein as such prisoner hath and may lawfully depart withal, shall be vested in the sheriff of the county, wherein such lands, tenements, goods, or chattels, shall lie or be found; and such sheriff is hereby authorized, empowered, and required, within sixty days after the taking of the said oath, ten days' previous notice of the time and place of sale being given, to sell and convey the same to any person or persons whatsoever, for the best price that can be got for the same; and the money arising from such sale, shall be by such sheriff or officer paid to the creditor or creditors, at whose suit such prisoner or prisoners shall be imprisoned, saving to every such prisoner, his or her necessary apparel, utensils of trade, and arms for the defence of himself and his country; and if any sheriff or other officer, shall fail to pay the money arising from such sale according to law, he shall be liable to the same penalty, to be recovered in the same manner, and by the same persons, as if the said money had been levied by a *fieri facias*.

§ 4. When any insolvent debtor shall be discharged pursuant to this act, and the schedule, subscribed and delivered in by such prisoner, shall contain money due to such prisoner, or of goods, chattels, or estates, belonging to him, and in the possession of another; in that case, the clerk of the court, with whom such schedule is directed to remain, shall immediately issue a summons against each of the persons named as debtors in the said schedule, and against such others as are therein said to have possession of any goods, chattels, or estates, of the property of the prisoner, reciting the sum of money he or she is charged with, or the particular goods, chattels, or estates, said to be in his possession, and requiring him or her to appear at the next court, and declare on oath, whether the said money, or any part thereof, be really due to such prisoner, and whether such goods, chattels, or estate, be really in his or her possession, and are the property of such prisoner; and if the person, so summoned, shall fail to attend according to such summons, or to show good cause for his non-attendance, it shall be lawful for the court to enter judgment against every such person for the money, goods, chattels, or estates, in such schedule mentioned, together with costs of suit, a lawyer's fee excepted; and if any such person, so summoned, shall appear and be sworn, judgment shall be entered for so much of the money, goods, or chattels, or estates, as he or she shall acknowledge to be due, or to be of the property of such prisoner, and in his possession, with costs as aforesaid;<sup>1</sup> which judgment shall be entered in the

<sup>1</sup> Garnishee is liable to costs *only* after summons and default.—See “Garnishment,”—§ 6.



name of the sheriff, who may thereupon proceed to levy the execution, as in other cases, and to dispose of the money, goods, chattels, or estates, so recovered, in the same manner as the estate, contained in the schedule, is hereby directed to be disposed of: *Provided, always*, That where any such garnishee shall not acknowledge the whole money to be due, or all the goods, chattels, or estates, mentioned in the schedule, to be the property of the prisoner, and in his possession, the sheriff, or such prisoner, at any time after, unless barred by any of the acts limiting the time for the commencement of actions, shall be at liberty to claim the residue by legal process; and the former judgment, as to such garnishee, shall be no further bar in such process, than for so much money, or such goods, chattels, and estates, as the garnishee is thereby ordered to pay or deliver.

§ 5. Every sheriff shall be allowed to retain out of the effects of such insolvent debtor, before the distribution thereof, all reasonable expenses in recovering such money, goods, chattels, and estates as aforesaid, including such a fee to a lawyer for the proceeding against the garnishee, as shall be judged reasonable by the court; and if such effects be not sufficient, he shall be reimbursed such expenses by the creditor or creditors, if more than one, in proportion to their demands.

*ib. Sec. 26.*  
Allowance to sheriff, what, and how paid.

§ 6. Where such insolvent shall not be able to satisfy or pay his ordinary prison fees, the sheriff or jailer may demand and receive of the party or parties, at whose suit such insolvent person shall be imprisoned, all such fees as shall become due, until such creditor shall agree to release such prisoner; and if the creditor, upon notice given to him or her, his or her attorney or agent, shall refuse to give security to the sheriff or jailer, for the payment of such prison fees, or shall fail to pay the same when demanded, such sheriff or jailer shall discharge such debtor out of the prison: *Provided, nevertheless*, That such insolvent prisoner shall be afterward liable to the action of the creditor to recover such fees; and such creditor may, notwithstanding his consent to the releasing such prisoner, at any time afterward, sue out a *scire facias* to have a new execution against the lands and tenements, goods and chattels of such prisoner, in case he or she shall afterward become possessed of any.

*ib. Sec. 27.*  
Fees for keeping insolvent debtors, how paid.

§ 7. When any debtor is in custody on several executions, it shall not be lawful for such debtor to demand any more or other diet, than if he was in custody on one execution only; nor shall any sheriff or jailer demand or receive more than the rate fixed by law, in case of a debtor confined on one execution only, which shall be paid by the creditor at whose suit such debtor was first taken.

*ib. Sec. 28.*  
Debtor to be allowed only single ration, and sheriff single fees.

§ 8. Where any person may be in custody, upon original or mesne process, such person shall be entitled to the benefit of the provisions of the act entitled "An Act concerning executions, and for the relief of insolvent debtors,"<sup>a</sup> in the same manner as is therein provided for persons charged in execution: *Provided, nevertheless*, That no plaintiff, in any suit against any person, who may have availed himself or herself of the provisions of the aforesaid act, and who shall not have obtained final judgment against such defendant, taking the benefit of the aforesaid act, shall receive any part of the proceeds of the estate of such prisoner, in the distribution thereof, to the prejudice of any person who may have charged the same prisoner in custody upon execution.

1811—(11)  
*Sec. 27.*  
Debtors in custody upon original or mesne process may be discharged in like manner.  
<sup>a</sup> See the preceding act.

§ 9. When any person may be taken on mesne process, or be taken in actual custody, or be charged in execution, and be desirous to deliver up his or her property for the benefit of his or her creditors, in

1821—(7)  
*Sec. 1.*  
Debtor wishing to sur-



render, shall  
give bond.

How persons  
not under  
arrest may  
have the ben-  
efit of this  
law.

Creditors to  
be notified.

*Ib. Sec. 2.*  
Applicants  
for surrender  
to deliver  
schedule  
with oath.

Debtors to be  
discharged.

Property ac-  
quired after  
surrender  
subject,

but no im-  
prisonment  
for previous  
debts.

*Ib. Sec. 3.*  
Penalty for  
false return.

order to be discharged from arrest or imprisonment, he or she shall enter into bond, with sufficient security, for the amount for which he or she shall be taken into custody, or be charged in execution, to the sheriff or other officer arresting such person, or charging him or her in execution, conditioned that he or she will personally appear and make surrender, in such manner as is now required by law, of his or her property or effects, for the benefit of his or her creditors, at such time and place as may be designated by the judge or two justices of the county where such person may make his or her application; (1) or when any person may conceive him or herself unable to pay, satisfy, or discharge, his or her debts, and may be desirous to exonerate him or herself from arrest, confinement, or the operation of legal process, and shall make known to any judge of the circuit courts of this state, or to any judge of the county court, or to the justices of the peace of the county where the application may be made, the names and residences of his or her creditors, or where they resided when the debts were contracted, and of his or her wish and intention, to exonerate him or herself from imprisonment, arrest or legal process, it shall be the duty of the judge or justices to whom the application may be made, to appoint a time and place, and to cause at least ten days' notice to be given to the creditors, their agents or attorneys, if within this state, and if without the state, twenty days' notice by advertisement in some public paper or papers, near where the creditors resided when the debts were contracted, or by causing notice to be served on them, of the application of the debtor, and of the time and place appointed by him or her to make his or her surrender, and to obtain for his or her person, a discharge from arrest or confinement.

§ 10. The applicant, coming before the judge or justices, (as the case may be,) at the time and place appointed, shall subscribe and deliver in a schedule of his whole estate, and make oath to the effect of that now required by law, in relation to insolvent debtors, with the exception of such articles as are, or hereafter by law may be, reserved to every family, or be exempted by law from seizure or execution: which schedule, and the property therein mentioned, shall be disposed of, in the manner directed by the existing laws, for the benefit of his or her creditors generally. Whereupon, such debtor shall be discharged by warrant from the judge or justices, to whom the application may be made: *Provided, nevertheless,* That it shall be lawful for any creditor or creditors, to prosecute his or their claim or claims to judgment, or by judgment at any time afterward obtained, to sue out a writ of *scire facias*, and to have execution against any lands or tenements, goods or chattels, which such insolvent person may thereafter acquire, or be possessed of; but no person, delivering in such schedule, and having taken the oath prescribed by this section, shall afterward be subject to imprisonment, arrest, or confinement, on account of any debts contracted, due, or owing, previous to the surrender of his or her property.

§ 11. Any insolvent debtor, who may wish to avail himself of the benefit of this act, and who shall willfully and knowingly make a

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(1) A security in a bond for the appearance of an insolvent debtor, to render his schedule, &c. under the act of 1821, is not liable, if the debtor does appear and obtain his discharge, although it be obtained fraudulently, provided the security be not a party to the fraud;—and such defence may be pleaded to an action on the bond. *Davis' Executors v. Cathey*, 1 *Stewt. Rep.* 402.



false return and surrender of his or her property or estate, or any part thereof, under the provisions of this act, and be convicted thereof, shall be subject to all the pains and penalties prescribed by law against perjury, and shall never thereafter be entitled to the privileges or benefits extended by this act.

§ 12. No person in custody shall have the liberty of the prison bounds who shall neglect or refuse, for sixty days, to take the benefit of this act. *Ib. Sec. 4. Time limited*

§ 13. All persons, ordered to be imprisoned for failing to pay any fine imposed by law, who shall be unable to pay the same, shall have the benefit of this act, subject to the same rules and restrictions applicable to other debtors.<sup>1</sup> *Ib. Sec. 5. Persons fined, may take the benefit of this act.*

§ 14. The bond, directed to be taken, by the first section of an act entitled "An Act amendatory to the laws now in force for the relief of insolvent debtors," passed June fifteenth, one thousand eight hundred and twenty-one,<sup>a</sup> from any person taken on mesne process, or in actual custody, or charged in execution, and who may be desirous of delivering up his or her property for the benefit of his or her creditors, in order to be discharged from arrest or imprisonment, shall, by the sheriff or other officer to whom such bond is, by said act, directed to be given, be assigned to the plaintiff or plaintiffs at whose suit such person shall be arrested, charged in execution, or taken into custody, by endorsement thereon, in the following form, to-wit: "I, A. B., sheriff (or coroner, or constable, as the case may be) of the county of \_\_\_\_\_, do hereby assign the within obligation and condition to C. D., his executors and administrators, to be sued for according to the statute in such cases made and provided. In witness whereof, I have hereunto set my hand, and affixed my seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_," which assignment shall be made before the time mentioned in the condition annexed to such bond, for the personal appearance of the principal obligor thereof, and the surrender of his or her effects; and should such bond be forfeited, the sheriff or other officer, taking the same, shall, within ten days after the time of such forfeiture, return the bond to the clerk's office of the court from which the mesne process or execution issued, and by virtue of which the principal obligor on such bond was arrested or taken in execution, or to the justice of the peace who issued such process or execution, (as the case may be,) with an endorsement on such bond, that the same is "forfeited." *1824—(30) Sec. 1. Debtor's bond to be assigned to plaintiff. a See § 9. Form of endorsement.*

§ 15. When any bond shall be returned "forfeited" to the clerk's office of any county or circuit court of this state, pursuant to the provisions of the first section of this act, it shall be the duty of the clerk to whose office the same may be so returned, on application of the person or persons to whom such bond may be assigned, his or their agent or attorney, to issue a *scire facias*, returnable to the next county or circuit court, (as the case may be,) against all the obligors in such bond, or any or either of them, or all or either of their executors or administrators, requiring them or any or either of them, to appear at such court and show cause why the plaintiff or plaintiffs should not have execution against them, for the full amount claimed by the plaintiff or plaintiffs to the mesne process or execution, by reason of which the principal obligor to such bond was arrested or charged in execution; and upon such *scire facias* returned *Ib. Sec. 2. When bond is returned to court "forfeited," a scire facias to issue against obligors.*

<sup>1</sup> For exceptions,—See "Penal Code," chap. 8, § 22.



Defendants failing to appear, judgment by default.

"made known," the defendant or defendants shall appear and plead, and trial be had at the first term, unless sufficient cause be shown for a continuance: *Provided*, That if such defendant or defendants do not appear and plead, within the first three days of the court to which such *scire facias* shall be returned "executed," the plaintiff or plaintiffs may take judgment by default; *And provided, also*, that the return of two *nihils* shall be considered a service.

*Ib. Sec. 3.*  
When bond is returned "forfeited" to justice, a summons in nature of a *sci. fa.* shall issue.

§ 16. Where any bond shall be returned "forfeited," before any justice of the peace of any county in this state, pursuant to the provisions of the first section of this act, it shall be the duty of such justice, upon the application of the person or persons to whom such bond may be assigned, his, her, or their agent or attorney, to issue a summons in the nature of a *scire facias*, against all, any or either of the obligors to such bond, their or either of their executors or administrators, requiring them, any or either of them, to appear at the same time and place therein specified, before himself or some other justice of the peace of the county where the same may be issued, to show cause, if any they can, why the plaintiff or plaintiffs in such summons should not have execution against them for the amount of the execution, by virtue of which the principal obligor in such bond was taken or charged in execution; and upon the return of such summons "executed," the defendants shall be ruled to trial immediately, unless good cause be shown for a continuance.

*Ib. Sec. 4.*  
Plaintiff in *sci. fa.* or summons, to recover full amount due with interest and costs.

§ 17. The plaintiff or plaintiffs to a *scire facias*, issued pursuant to the second section of this act, and the plaintiff or plaintiffs to a summons, issued pursuant to the provisions of the third section of this act, shall be entitled to recover of the defendant or defendants, to such *scire facias* or summons, the full amount of the sum due by the execution or executions, or other process, mentioned in the condition of the bond, on which such *scire facias* or summons may be founded, together with interest, and the costs of such *scire facias* or summons.

*Ib. Sec. 5.*  
Penalty on officer for failing to assign & return bond.

§ 18. If any sheriff, coroner, or other officer, shall fail to assign, endorse, and return any bond taken by him from any insolvent debtor, as required by the first section of this act, such sheriff, coroner or other officer, shall be liable to the party injured thereby, to the full amount of the injury sustained, to be recovered before any court having jurisdiction thereof.

*Ib. Sec. 6.*  
Where debts due to insolvents remain unpaid, judge of county court shall appoint commissioners to collect them.

§ 19. In cases where insolvents have been heretofore discharged, and no proceedings have been had to collect the debt due such insolvents, the schedules of such insolvents shall be returned to the office of the clerk of the county court; and the judge of said court shall appoint one or more persons as commissioners in each case, who shall have authority to collect and recover all debts, property, and estate due such insolvents, which are included in such schedules, or which may be omitted through the fraud of such insolvents, or otherwise; and the money, when recovered, shall be distributed as now required by law: and the proceedings may be carried on in the names of such insolvents, it being stated on the original process, that the plaintiffs therein are insolvent debtors; and the death of such insolvents shall not affect such proceedings.

NOTE.—See "Bail in Civil Cases," § 1, 2, for modifications of the law on this subject.



## INSPECTION—STAVES, ROSIN, TOBACCO, &amp;C.

§ 1. THE county court of any county in this state, in which a port of entry is now, or hereafter may be established, is hereby authorized and empowered to appoint one or more fit and suitable persons, as inspectors of tar, turpentine, pitch, rosin, and lumber.

§ 2. Each inspector, before he enters upon the duties of his office, shall enter into bond, with two good and sufficient securities, to be approved of by the said court, payable to the governor for the time being, and his successors in office, in the sum of one thousand dollars, for the faithful performance of the duties of his office; and likewise, shall take and subscribe the following oath: "I, \_\_\_\_\_, do solemnly swear, (or affirm,) that according to the best of my abilities, I will comply with, and faithfully fulfil the duties of inspector, according to law: So help me God."

§ 3. All staves for exportation shall be made of good and sound timber, free of worm-holes, and shall be of the following qualities and dimensions, viz: Each pipe stave shall be made of white-oak, fifty-four inches long, three inches wide, and one inch<sup>1</sup> thick at the thin edge, free of sap; each white-oak hogshead stave shall be forty-two inches long, three and one-half inches wide, and not less than seven-eighths of an inch thick at the thin edge, and free of sap; each red-oak hogshead stave shall be forty-two inches long, three and a half inches wide, and not less than three-fourths of an inch thick, at the thin edge; each hogshead heading shall be made of white-oak, thirty-two inches long, five inches wide, and not less than one inch thick at the thin edge, and free of sap; each white-oak barrel stave shall be thirty-two inches long, three and a half inches wide, and not less than three-fourths of an inch thick at the thin edge, and free of sap; each red-oak barrel stave shall be thirty-two inches long, three and a half inches wide, and not less than one inch thick at the thin edge; each barrel heading shall be made of white-oak, nineteen inches long, six inches wide, and not less than three-fourths of an inch thick at the thin edge, and free of sap. Each and every barrel of pitch or rosin shall be hooped with six good hoops on each end, and shall weigh three hundred and twenty pounds gross; each barrel of tar and turpentine shall be in good barrels, made of seasoned timber, and shall be bound with seven good hoops on each end, shall be well packed, free of water, strained and clear, without chips, filth or dirt, and shall contain thirty-two gallons.

§ 4. Each inspector, appointed as aforesaid, shall brand his name at full length, and place of residence, on one head of each and every barrel of pitch, rosin, tar, and turpentine, that he may inspect and pass as merchantable, according to the requisitions of this act; he shall also keep a book, in which he shall enter the quantities of each and every article by him inspected and passed, the name of the person for whom the same was inspected, and his place of residence; and shall give a certificate of the same when required, after the fees for inspecting the same shall have been paid him, charging for said certificate, twenty-five cents. It shall, moreover, be the duty of each and every inspector, appointed under the provisions of this act, to have and keep a brand for the purpose; and each and every barrel of pitch, rosin, tar, and turpentine, that he may be called to inspect,

[1819—(23)  
Certain  
county  
courts may  
appoint in-  
spectors.

Inspector to  
give bond,

and take  
oath.

What staves  
and heading  
merchanta-  
ble.

Pitch and  
rosin.

Tar and tur-  
pentine.

Inspector  
shall brand  
each barrel  
of pitch, &c.  
and record  
quantity &c.

Barrels of  
pitch, &c.  
not conform-

<sup>1</sup> Three-fourths of an inch.—See § 8.



able to this  
law, to be  
condemned.

and which shall not be competent to contain the quantities, as before required in the third section of this act, or in any barrel in which he may discover any intentional fraud or neglect, in the manufacture or putting up of the same, to brand on each head and bung-stave, the word "*Condemned*."

Penalty for  
exporting ar-  
ticles not in-  
spected or  
condemned.

§ 5. If any person or persons shall export, or attempt to export from any port or place in this state, to a port or place in another state, or foreign port, any of the articles above enumerated, not having been inspected according to the true intent and meaning of this act, or shall attempt to export any that have been condemned by an inspector, he or they shall forfeit the whole of the article or articles so attempted to be exported; to be recovered by action, in any court having jurisdiction of the same, the one-half of the proceeds thereof to the use of the person suing for the same, the other half to the state.

*Ib. Sec. 7.*  
Inspector  
required to  
detect fraud  
in pitch and  
rosin.

§ 6. Should any inspector have reason to suspect a fraud, in any barrels of pitch or rosin, that he may be called to inspect, it shall be his duty, and he is hereby authorized, to cut open any number of barrels, not exceeding one for every ten of the whole number so suspected; and upon finding the same partly filled with anything other than pitch or rosin, with intent to defraud, in that case the whole number shall be condemned, and branded accordingly, with the word "*Condemned*;" and the said inspector shall sell, or cause the same to be sold, at auction, within five days; and the net proceeds thereof, pay into the treasury of the state: and he is hereby required, to keep a true and faithful account of the same, in a book for the purpose, and shall be allowed five per centum on the proceeds of all such condemned articles.

If condemn-  
ed, to sell it.

*Ib. Sec. 8.*  
Neglect of  
inspectors,  
how pun-  
ished.

§ 7. If any inspector, appointed as aforesaid, shall knowingly and willfully fail to comply with the duties and requisitions of this act, or shall pass as merchantable any of the before enumerated articles, other than is expressly permitted and required by law, he shall forfeit and pay the sum of two hundred dollars, to be recovered by action of debt, in any court having jurisdiction of the same, the one-half to the person suing for the same, the other half to the state; and the county court shall thereupon displace him, from the office of inspector: *Provided*, That no person shall be eligible to hold the office, or exercise the duties of inspector of any article or articles that he may buy, sell, and traffic in.

Who inelligi-  
ble as in-  
spectors.

1830—(27)

*Sec. 1.*  
Pipe and  
hogshead  
staves for ex-  
portation.

§ 8. All white-oak hogsheads and pipe staves intended for exportation, shall hereafter be of the following dimensions, to wit: hogshead staves, forty-two inches long, three and one-half inches wide, and three-fourths of an inch thick, on the thin or heart edge, clear of sap; pipe staves, fifty-four inches long, not less than three inches wide, and three fourths of an inch thick, on the thin or heart edge, clear of sap.

*Ib. Sec. 2.*  
Inspector  
to cull staves  
if required.

§ 9. It shall be the duty of the inspector of staves, when required so to do by the purchaser or seller of staves, of any kind, to cull the merchantable from the refuse staves, and the refuse staves so culled shall be the property of the seller: *Provided, however*, That in the event of any person or persons shipping or attempting to ship, any such refuse staves, he or they shall be liable to the same penalties as are imposed by the act of which this is an amendment. And the inspector of staves, who may cull staves, as required by this act, shall receive the following fees of inspection, to wit: for white-oak hogshead and pipe staves, and hogshead heading, seventy-five cents per thousand; for inspecting red-oak hogshead staves, red-oak barrel

Fees.



staves, and white-oak barrel staves, and heading, fifty cents per thousand; and for inspecting and branding pitch, rosin, tar, and turpentine, four cents per barrel.

§ 10. In all cases, where there is no agreement between the seller and purchaser of any article of lumber, staves, and naval stores, to the contrary, all expenses of inspection and directing charges, where said articles are carried to market on rafts, shall be borne and paid jointly by the parties.

§ 11. No person shall put on board, or receive into any ship, brigantine, schooner, sloop, bylander, boat, or other vessel, in order to be exported therein, any tobacco which shall not have been packed in hogsheads or casks, upon any pretence whatever, before the same shall have been received and inspected according to the directions of this act. All tobacco whatever, to be received or taken on board of any ship, brigantine, schooner, sloop, bylander, or other vessel, and to be therein exported, or to be carried and put on board any other ship, brigantine, schooner, sloop, bylander, or other vessel, for exportation as aforesaid, shall be received or taken on board at the several warehouses for that purpose, hereinafter mentioned, or some one of them, and at no other place or places whatever; and if any commander or master of any ship, or other vessel, shall take on board, or suffer to be taken on board the ship or vessel whereof he is master, any tobacco brought from any other place, than such public place herein mentioned, or any hogshead or cask of tobacco not stamped by such lawful inspector, or shall suffer to be brought on board, any tobacco except in hogsheads or casks stamped as aforesaid, every such commander or master shall forfeit and pay fifty dollars for each hogshead, one moiety thereof to the use of the informer, and the other moiety to the use of the state, to be recovered before any justice of the peace for the county in which said cause of action may accrue.

§ 12. Public warehouses for the inspection of tobacco pursuant to this act, shall be kept at the several places hereinafter mentioned, to wit: at the city of Mobile, and town of Selma; and the proprietor of each warehouse is hereby entitled to demand and receive, for the storage of each hogshead of tobacco inspected at his warehouse, fifty cents: *Provided*, That the said tobacco does not lie longer in said warehouse, than twelve months, and for every month after, the owner or proprietor of such tobacco shall pay at the rate of twelve and a half cents per month, which duty or storage shall be paid to the several inspectors, before the same shall be removed from the said warehouse, who shall be answerable to the owner or proprietor thereof, for the full amount of such storage, by them received. And the inspectors shall be entitled to one dollar for each hogshead of tobacco delivered, to be paid in like manner as warehouse rents or storage are, and to be divided between the two acting inspectors as their full fee for inspection, and no inspector shall receive a salary or other fee, except what is allowed by this act.

§ 13. There shall be kept at the several warehouses hereby established, and all others hereafter to be established, a good and sufficient pair of scales, with weights sufficient to weigh fifteen hundred-weight at least, and a set of small weights, the same that are or ought to be provided for the standard weights of each county, and the proprietors of such warehouse shall provide the same.

§ 14. All tobacco, brought to any public warehouse, shall be viewed, inspected, and examined by two persons thereunto appointed.

*Ib. Sec. 3.*  
Certain expenses to be jointly borne by seller and purchaser.

*Ib. Sec. 3.*  
Tobacco to be packed and inspected, before exported.

Penalty on masters of vessels for violating this act.

*Ib. Sec. 2.*  
Warehouses for inspection, in Mobile and Selma.  
Rate of storage.

Inspectors entitled to one dollar per hogshead

*Ib. Sec. 3.*  
Inspectors to provide and keep scales and weights.

*Ib. Sec. 4.*  
Tobacco shall be



viewed by inspectors to be appointed by judge of county court, and commissioners of revenue and roads.

Inspectors may be dismissed from office, on complaint lodged with clerk of county court.

Inspector to give bond.

*Ib. Sec. 5.* Inspectors to attend warehouses from 1st Sept. to 1st May.

Penalty for neglect.

Tobacco to be entered in a book as brought in, and inspected accordingly.

ed, who shall be called inspectors, and shall be appointed in the following manner, to wit: the judge of the county court and commissioners of the revenue and roads in the counties where any warehouse may be established, except as hereinafter excepted, shall, at their county courts, held on the third Monday of August in each year, appoint three fit and proper persons for inspectors at each of the several warehouses in their respective counties, who shall receive a certificate of such appointment by the clerk of the county court of the county wherein such appointment may be made; the two first in nomination shall be considered as acting inspectors for the ensuing year, and in case of sickness, death, or inability of either of the first inspectors, the third shall act, and also on the disagreement of the said inspectors, the third shall be called in to decide on such hogshead or hogsheads of tobacco; and on complaint in writing being lodged in the office of the clerk of the county court, and being duly notified thereof by such clerk, such judge and commissioners, or a majority of them, shall, within three days after such notice to them given, summon the inspector before them, first ordering a copy of the complaint to be served on him or them; within five days thereafter such judge and commissioners shall consider such complaint, and may continue or dismiss from office him or them, as the court shall judge just; and such court shall fill all vacancies that may happen at any of their said courts, to continue to the end of their inspection: *Provided, always*, That the third inspector, on the death or removal of any inspector in the same nomination, shall be considered an inspector and act accordingly; and every person, appointed inspector by virtue of this act, shall, before he enters on the execution of his office, give bond with security in the penalty of two thousand dollars, payable to the governor for the time being and his successors, conditioned for the true and faithful performance of his duty according to the directions of this act, and be liable to be put in suit upon any neglect of duty; which bond shall be approved by the judge of the county court, and deposited in the clerk's office of said court.

§ 15. All inspectors, to be appointed by virtue of this act, shall attend at all times when required by any owners of tobacco, at the warehouse or houses under their charge, from the first day of September until the first day of May, annually, Sundays excepted, or when prevented by sickness; and afterwards, they, or one of them, shall attend to deliver tobacco for exportation, until all the tobacco remaining there on the said first day of May shall be delivered; and no inspector shall be obliged to view any tobacco between the said first day of May and the first day of September; and every inspector, neglecting to attend as aforesaid, shall forfeit and pay to the party aggrieved, one dollar for every neglect, and shall be liable to an action to recover all such damages as he or they shall have sustained by occasion of any such neglect, together with his or their full costs; and that all persons, having tobacco at the public warehouse, may have equal justice, the inspector shall enter in a book to be kept for that purpose, the mark and owner's name of all tobacco brought to their respective warehouses for inspection, as the same shall be brought in, and shall review and inspect the same in due time as it shall be entered in such book, without favor or partiality; and in case they shall break any hogshead of tobacco brought them to be inspected as aforesaid, and if they shall agree that the same is good, sound, well-conditioned, merchantable, and clear of trash, then such tobacco shall be weighed in scales with weights of lawful



standard, and the hogshead or cask shall be stamped in the presence of the said inspectors, or one of them, with the name of the warehouse at which inspected, and also the tare of the hogshead or the cask, and quantity of net tobacco therein contained; and the inspectors at such warehouse shall sign a receipt for each hogshead of tobacco they shall pass, if required by the owner, if the same weigh nine hundred and fifty pounds at least, which receipt shall state the quantity and quality of tobacco, whether first, second, or third rate; and if such tobacco shall not be considered merchantable, it shall not be of either quality, and shall be returned by said inspector to the owner.

Hogshead stamped, and receipt given

Tobacco not merchantable, to be returned to owner.

§ 16. The size of the hogshead or cask shall not exceed forty-nine inches in length, and thirty-one inches in the rising head, and to weigh, nine hundred and fifty pounds at least: *Provided*, That nothing, herein contained, shall prevent any person or persons from sending chewing-tobacco to market in less quantities than five hundred pounds.

Ib. Sec. 6. Size of hogsheads.

§ 17. There shall be a warehouse for the inspection of tobacco established at Decatur and Wetumpka,\* each, in this state, which shall be governed by the same rules and regulations, as the warehouses for the inspection of tobacco heretofore established at Mobile and Selma, in this state.

1841—(17)  
Sec. 1.  
Tobacco warehouses at Decatur & Wetumpka.  
[a] 1843—(26)  
Sec. 1.]

§ 18. Inspectors of tar, turpentine, bagging and rope, &c. in the city of Mobile, shall be elected in the manner and form now prescribed by law, on the third Monday in August, in each and every year; and the inspectors thus elected shall continue in office one year.

1841—(18)  
Sec. 1.  
Inspectors in Mobile, when elected

§ 19. The inspectors, heretofore appointed, and now in office, in the city of Mobile, shall hold their offices until the third Monday in August, one thousand eight hundred and forty-one, at which time the first election under this act shall be holden.

Ib. Sec. 2.

§ 20. It shall not be lawful for any weigher of cotton in the city of Mobile, to charge more than six and one quarter cents for each bale weighed; and if any person shall presume to charge more for such services, he shall forfeit for each violation of this act, the sum of one hundred dollars, to be recovered by action of debt, in any court of competent jurisdiction; one-half of which shall go to the use of the county of Mobile, and the other half to the person who may prosecute the action.

1841—(19)  
Sec. 1.  
Allowance for weighing cotton in Mobile.  
Penalty for extortion.

NOTE.—The mayor and aldermen of the city of Mobile are authorized to appoint inspectors of oil, and an inspector of flour, salt and fish. See "Oil."

## INTEREST.

§ 1. WHEN partial payments are made on bonds, contracts, or assurances for the payment of money, or property, that bear interest, agreeably to the laws of this state, the interest that then thus accrued, shall be first credited, and the balance of such partial payment shall be placed to the payment of the principal.

1811—(11)  
Sec. 25.  
Partial payments made, interest first credited.

§ 2. On all contracts, written or verbal, ascertaining the sum due, where no specific premium or rate of interest is expressed, interest shall be taken, recovered, and allowed, at the rate of eight per centum per annum, from and after said sum is due and payable.

1818—(5)  
Eight per cent. allowed on all contracts.  
(See "Usury.")



Banks allowed only 6 per cent.

1818—(10)

Sec. 1.  
Notes not exceeding one dollar to bear interest at the rate of 100 per cent.

1818—(14)

Judgments to bear interest.

§ 3. Nothing in this act contained, shall be so construed, as to make it legal for any bank to receive more than at the rate of six<sup>1</sup> per centum per annum, for and upon its loans and discounts.

§ 4. All notes or bills for a sum not exceeding one dollar, drawn by any individual or private co-partnership, or association, or corporate body, (except regularly chartered banks,) and made payable to any person, or order, or bearer, or simply expressing a sum due, shall be deemed and taken to bear interest at the rate of one hundred per centum per annum, calculating the said interest from the date of such notes or bills as may be hereafter issued, and from the time of presentment for payment of such as have been issued before the passage of this act.

§ 5. All judgments shall bear interest from their date, at the rate established by law for contracts specifying no rates.

NOTE.—Banks refusing specie payment, are liable after demand, and during such refusal, to pay interest on their notes at the rate of twelve per cent. per annum.—See Con. Ala. Art. 6.—Banks (Rule 6, p. 77.) Judgments rendered on motion against constables, for failing to pay over money collected by them, bear interest at the rate of five per cent. per month.—See "Executions,"—§ 86.

## JUDICIARY—JUDGES AND COURTS.

Con. Ala.  
Art. 5, Sec. 1.  
Judicial  
power,  
where vested

§ 1. THE judicial power of this state shall be vested in one supreme court, circuit courts to be held in each county in the state, and such inferior courts of law and equity, to consist of not more than five members, as the general assembly may, from time to time, direct, ordain, and establish.

Sec. 11.  
Compensation  
of  
judges.

§ 2. Judges of the supreme and circuit courts, and courts of chancery, shall, at stated times, receive for their services a compensation, which shall be fixed by law, and shall not be diminished during their continuance in office: but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under this state, the United States, or any other power.

Sec. 12.  
Judges, how  
elected.

§ 3. Chancellors, judges of the supreme court, judges of the circuit courts, and judges of the inferior courts, shall be elected by joint vote of both houses of the general assembly.

Sec. 13.  
(Amendment,  
Jan. 16, 1830)  
Term of service.  
How removed.

§ 4. The judges of the several courts of this state shall hold their offices for the term of six years; and for willful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment, the governor shall remove any of them, on the address of two-thirds of each house of the general assembly: *Provided, however,* That the cause or causes for which such removal shall be required, shall be stated at length in such address, and entered on the journals of each house; *And provided, further,* That the cause or causes shall be notified to the judge so intended to be removed, and he shall

<sup>1</sup> Interest calculated on the extended debt at 8 per cent.—See "Bank of the State and Branches—General Provisions," § 51. Also, at the rate of 7 per cent. per annum on \$5,000,000 of its capital.—*ib.* § 69. The Branch Banks at Huntsville, Decatur and Montgomery may take 7 per cent. per annum on notes having from 6 to 9 months to run, and 8 per cent. per annum on notes having from 9 to 12 months to run.—See charter Huntsville Branch, § 18, "Bank of the State and Branches—General Provisions,"—§ 3.



be admitted to a hearing in his own defence, before any vote for such address shall pass ; and in all such cases, the vote shall be taken by yeas and nays, and entered on the journals of each house, respectively ; *And provided, also*, That the judges now in office may hold their offices until the session of the general assembly, which shall be held in the year one thousand eight hundred and thirty-three, and until their successors shall be elected and qualified, unless removed by address or impeachment.

§ 5. No person, who shall have arrived at the age of seventy years, shall be appointed to, or continue in, the office of judge in this state. Those in office may remain until session of 1833. Sec. 14. Age disqualifies.

§ 6. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the state ; as also the judges of the circuit courts in their respective districts, and judges of the inferior courts in their respective counties. Sec. 16. Judges, conservators of the peace.

§ 7. All courts shall be open, and every person for an injury done him, in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay. Art. 1. Sec. 14. Courts to be open, &c.

§ 8. The right of trial by jury shall remain inviolate. Sec. 28. Trial by jury.

§ 9. No person shall be debarred from prosecuting or defending any civil cause, for or against him or herself, before any tribunal in this state, by him or herself, or counsel. Sec. 29. Right of prosecuting and defending.

### SUPREME COURT.

§ 1. THE supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law : *Provided*, That the supreme court shall have power to issue writs of injunction, *mandamus*, *quo warranto*, *habeas corpus*, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions. (1) Con. Ala. Art. 5, Sec. 2. Powers of the supreme court.

§ 2. Until the general assembly shall otherwise prescribe, the powers of the supreme court shall be vested in, and its duties shall be performed by, the judges of the several circuit courts within this state ; and they, or a majority of them, shall hold such sessions of the supreme court, and at such times as may be directed by law : *Provided*, That no judge of the supreme court shall be appointed before the commencement of the first session of the general assembly, which shall be begun and held after the first day of January, in the year one thousand eight hundred and twenty-five. Sec. 3. To be held by judges of circuit court until otherwise directed.

§ 3. The supreme court shall be holden at the seat of government but may adjourn to a different place, if that shall have become dangerous from an enemy or from disease. Sec. 4. To be holden at seat of government.

§ 4. The judges of the supreme court of errors and appeals, and each of them, shall have power and authority to issue forth writs of error, to the several superior courts of law and equity, to remove any judgment or decree, either at common law or in chancery, into the said supreme court ; and also writs of *certiorari*, *habeas corpus*, and 1814—(4) Sec. 4. Powers of judges, and duties of the court.

(1) The supreme court has a general supervising power over all inferior judicial tribunals which may be erected, to prevent the violation of a positive right. *Bell et al. v. Payne and Williams. 2 Stewt. Rep. 413.*



all remedial and other writs and process, properly allowable by a judge of the supreme court of errors and appeals, returnable to the same; and the said supreme court shall hear and determine all manner of pleas, complaints, and causes, both at law and in equity, which shall be removed, and brought before it, from any of the superior courts of law and equity, and all causes, matters, and things, cognizable in the same; but no cause shall be removed into the said supreme court, until after final judgment in the court below, except where the judge or judges in the said court below shall doubt as to the law, or rule of decision; and in that case, he or they may respite the final judgment, and refer the question to the said supreme court, for their determination; and if the point or question does not appear on the record, it shall be the duty of the judge in the court below to state the same in writing, and send it, with the other proceedings in the cause, to the said supreme court, who shall have power and authority to grant judgment thereon, according to the right of the matter, and award execution, except it be necessary, in consequence of the determination of the said supreme court, that facts be ascertained, or damages assessed by a jury, in which case the cause shall be remanded to the court from whence it was brought.

1832—(31)

Sec. 1.

Writs of injunction and *supersedeas*.

§ 5. The judges of the supreme court are hereby authorized and required to grant writs of injunction and *supersedeas* in the same manner, and under the same regulations, as the judges of the circuit courts of this state are or may be authorized to grant the same.

1819—(6)

Sec. 22.

Judges to file opinions in writing. On writ of error allowed, opinion of circuit judge to accompany record.

§ 6. The judges of the court of errors and appeals, as well as the circuit court judges, shall, as to the decisions on all material points, file their opinions in writing, among the papers of the cause in which such opinion may be given, within ten days after such opinion may be delivered; and when a writ of error shall be allowed to reverse the judgment of any circuit court in any cause, the clerk thereof shall send a transcript of the opinion of the judge to the court of errors and appeals, as a part of the record of the cause, properly certified. (1)

Ib. Sec. 23.

Judges to establish rules in supreme court, and uniform practice in inferior courts.

§ 7. It shall be the duty of the judges of the court of errors and appeals, at the first term of said court, or as soon thereafter as may be practicable, to ordain and establish rules and regulations, for the government of the proceedings and practice in said court; also, to establish a regular and uniform practice throughout all the courts of record in this state.

1832—(6)

Sec. 1.

Three judges of supreme court. Tenure of office.

§ 8. The supreme court for this state, (both in law and equity,) shall hereafter be held by, and the powers of the same shall be vested in, and its duties shall be performed by, three judges, to be elected by joint vote of both houses of the general assembly, who shall be styled "Judges of the Supreme Court of Alabama," and shall hold their offices for and during the term of six years, from their appointment.

Ib. Sec. 2.

To sit till all business is completed. To appoint chief justice.

§ 9. The said judges, or a majority of them, shall continue to hold the sessions of the said court, from day to day, (Sundays excepted,) until the business thereof be completed; and shall, at their first session, appoint one of their own body, "Chief Justice of the Supreme Court," which appointment shall be entered of record: and in case of his absence at any succeeding time, one of the judges present shall be appointed "Chief Justice *pro tempore*," and all orders of the court

(1) *Certiorari* allowed by the supreme court, to bring up a transcript of the judge's opinion below. *Olds v. Sargent*, *Min. Rep.* 320.



shall be signed by him : *Provided, always,* That one judge, or if no judge appears, the sheriff, may adjourn the court from day to day, until a sufficient number appear to constitute a court, if that shall be before the sixth day of the term, at which time, if a sufficient number of judges cannot appear to form a court, the judge or sheriff, as the case may be, shall adjourn the court to the next stated term, to which term all cases shall stand continued.

§ 10. The said judges shall, before they enter upon the discharge of the duties of their office, take and subscribe the several oaths now required by law to be taken by the various officers of this state ; which oaths so taken and subscribed, shall be filed in the secretary of state's office.

§ 11. The session of said court shall hereafter commence on the first Mondays of January and June in each year.

§ 12. The judges of the supreme court may hold adjourned terms of said court, for the trial of such causes as the counsel on both sides thereof may agree to set for trial at such adjourned term, to be called and heard in the order in which they are set for trial, of which the clerk shall make record ; and it shall be the duty of the court to cause to be entered of record at the time of setting such causes for trial, the time of the commencement of such adjourned term.

#### REPORTS OF DECISIONS.

§ 13. The decisions of the supreme court shall be published at the expense of the state : and the governor of the state is hereby directed to cause proposals to issue, upon such notice as he shall deem reasonable,\* for the publication thereof, and shall require bond and security for the faithful performance thereof.

§ 14. The judges of the supreme court shall prepare for publication a sufficiency of the decisions of the supreme court, which, with the accompanying notes, memoranda and index, will compose a volume of, at least, five hundred pages : one volume of which, not exceeding five hundred copies,<sup>b</sup> shall be published yearly ; and the salaries of said supreme court judges shall each be, annually, twenty-two hundred and fifty<sup>c</sup> dollars, to be paid quarterly as heretofore, so long as they continue to report the decisions of said court : *Provided,* Said judges shall receive no other compensation or profits for the discharge of their duties, than those herein specified.

§ 15. The said books shall be exposed to sale in the mode prescribed by law, at a sum not exceeding five dollars.

§ 16. On the certificate of the governor of the state that the work has been correctly executed, the comptroller shall issue his warrant for the amount therein specified.

§ 17. The said judges shall secure the copyright of the said book for the use of the state of Alabama.

§ 18. There shall be delivered to the secretary of state, for the use of the state, eighty-five copies of all reports so published, as soon as each volume shall be completed : which<sup>d</sup> copies shall be distributed as follows, viz : to the governor, the judges of the supreme and circuit<sup>e</sup> courts, the judges of the several county courts, the attorney general, the several solicitors,<sup>f</sup> and the comptroller of public accounts, one copy each ; four copies for the use of each house of the general assembly ; and the residue shall be deposited in the office of the secretary of state : and in case of the death, resignation, or dismissal from office, of either of the officers before mentioned, the

One judge, or the sheriff, may adjourn court from day to day, and to next term.

*Ib. Sec. 3.*  
Judges' oaths of office.

1832—(15)  
*Sec. 3.*  
Supreme court, when held.

1833—(37)  
*Sec. 1.*  
Judges may hold adjourned terms.

1833—(31) to  
1843—(27)  
*consolidated.*  
1833—(31)

*Sec. 1.*  
[a 1836 (15)  
*Sec. 2.*] Decisions to be published. Governor to give notice, &c.

*Ib. Sec. 2.*  
Judges to report decisions.

[b 1843—(27)  
*Sec. 2.*] Their salaries increased.

[c 1842—(4)  
*Sec. 1.*]

*Ib. Sec. 3.*  
Sale of reports.

*Ib. Sec. 4.*

*Ib. Sec. 5.*  
Judges to secure copy right to state.  
1831 (9)

*Sec. 2.*  
To deliver secy of state 85 copies.

[d 1828—(19)  
*Sec. 1 & 3.*] How distributed.

[e 1833—(15)  
*Sec. 1.*]

[f 1839—(21)  
*Sec. 1.*]



copies of the decisions delivered to them as aforesaid, shall belong and be delivered to their successors in office.

1836—(15)

Sec. 1.  
Printer of re-  
ports to be  
paid one half  
of the am't of  
his contract,  
when.

§ 19. Whenever it shall be made to appear to the satisfaction of the governor of this state, that the person, employed to print the decisions of the supreme court of this state, has completed the printing of any one volume of said reports, according to his contract, he shall issue an order to the comptroller, directing him to issue his warrant in favor of said printer, for one-half of the amount for which said printing was contracted to be done.

1840—(26)

Sec. 1.  
Supreme  
court library  
increased.

§ 20. The proceeds of the sales of the decisions of the supreme court, after paying the expenses of printing, shall be applied, under the direction of the governor and supreme court judges, to the purchase of books for the supreme court library.

1843—(27)

Sec. 4.  
Price of vols.  
1, 2, 3, of  
reports.

§ 21. The price of the first, second and third volumes of Alabama Reports, new series, is hereby reduced to three dollars.

1843—(59)

Sec. 1.  
Stationery  
for supreme  
court.

§ 22. The secretary of state is required to furnish such stationery for the use of the supreme court, as may be directed by the judges thereof, for *their use alone*.

## CIRCUIT COURT.

Con. Ala.  
Art. 5, Sec. 6.  
Circuits and  
judges.

§ 1. The state shall be divided into convenient circuits, and each circuit shall contain not less than three, nor more than six counties; and for each circuit there shall be appointed a judge, who shall, after his appointment, reside in the circuit for which he may be appointed.

Sec. 6.  
Jurisdiction.

§ 2. The circuit court shall have original jurisdiction in all matters, civil and criminal, within the state, not otherwise excepted in this constitution; but in civil cases, only when the matter or sum in controversy exceeds fifty dollars.<sup>1</sup>

Sec. 7.  
Two courts a  
year.  
Alternation  
of judges.

§ 3. A circuit court shall be held in each county in the state, at least twice in every year, and the judges of the several circuit courts may hold courts for each other, when they may deem it expedient, and shall do so, when directed by law.

1843—(28)

Sec. 1.  
Judicial cir-  
cuits.

§ 4. The State of Alabama is hereby divided into nine judicial circuits, as follows, to wit:

1st Circuit.

The counties of Marengo, Perry, Bibb, Autauga and Coosa, shall compose the first circuit:

2d “

The counties of Conecuh, Covington, Wilcox, Butler, Lowndes and Dallas, shall compose the second circuit:

3d “

The counties of Greene, Tuscaloosa, Jefferson, Shelby and St. Clair, shall compose the third circuit:

4th “

The counties of Limestone, Lauderdale, Franklin, Lawrence and Morgan, shall compose the fourth circuit:

5th “

The counties of Madison, Jackson, Marshall, De Kalb, Cherokee and Benton, shall compose the fifth circuit:

6th “

The counties of Mobile, Washington, Baldwin, Clarke and Monroe, shall compose the sixth circuit:

7th “

The counties of Sumter, Pickens, Fayette, Marion, Walker and Blount, shall compose the seventh circuit:

8th “

The counties of Montgomery, Pike, Dale, Coffee, Henry and Barbour, shall compose the eighth circuit:

<sup>1</sup> See “Constitution,” Art. 5, § 8, and “Judicial Proceedings in Chancery,” § 63.



And the counties of Talladega, Randolph, Chambers, Tallapoosa, 9th Circuit. Macon and Russell, shall compose the ninth circuit.

§ 5. The terms of the circuit court of each county in the several <sup>*Ib. Sec. 2.*</sup> circuits, shall be holden at the times hereinafter specified, that is to <sup>Courts,</sup> say: the terms of the circuit courts of the several counties compos- <sup>when held,</sup> ing the first circuit, shall commence and be holden as follows, <sup>1st Circuit.</sup> to wit:

In the county of Bibb, on the first Mondays after the fourth Mon- Bibb. days in March and September in each year, and continue one week:

In the county of Autauga, on the second Mondays after the fourth Autauga. Mondays in March and September in each year, and continue one week:

In the county of Coosa, on the third Mondays after the fourth Coosa. Mondays in March and September in each year, and continue one week:

In the county of Perry, on the sixth Mondays after the fourth Perry. Mondays in March and September in each year, and continue two weeks:

And in the county of Marengo, on the eighth Mondays after the Marengo. fourth Mondays in March and September, and continue until the business is disposed of.

And the terms of the circuit courts of the several counties, <sup>*2d Circuit.*</sup> composing the second judicial circuit, shall commence and be holden as follows, to wit:

In the county of Covington, on the first Mondays of March and Covington. September in each year, and continue one week:

In the county of Conecuh, on the second Mondays of March and Conecuh. September in each year, and continue one week:

In the county of Butler, on the third Mondays of March and Sep- Butler. tember in each year, and continue one week:

In the county of Lowndes, on the fourth Mondays of March and Lowndes. September in each year, and continue two weeks:

In the county of Wilcox, on the second Mondays after the fourth Wilcox. Mondays in March and September in each year, and continue two weeks:

And in the county of Dallas, on the fourth Mondays after the Dallas. fourth Mondays in March and September in each year, and continue three weeks.

§ 6. The terms of the circuit courts of the several counties, com- <sup>*Ib. Sec. 3.*</sup> posing the third judicial circuit, shall commence and be holden as <sup>*3d Circuit.*</sup> follows, to wit:

In the county of St. Clair, on the first Mondays of March and St. Clair. September in each year, and continue one week:

In the county of Shelby, on the second Mondays in March and Shelby. September in each year, and continue one week:

In the county of Jefferson, on the third Mondays in March and Jefferson. September in each year, and continue one week:

In the county of Tuskaloosa, on the fourth Mondays in March Tuskaloosa. and September in each year, and continue two weeks:

And in the county of Greene, on the second Mondays after the fourth Greene. Mondays of March and September in each year, and continue three weeks.

§ 7. The terms of the circuit courts of the several counties, com- <sup>*Ib. Sec. 4.*</sup> posing the fourth judicial circuit, shall be commenced and holden as <sup>*4th Circuit.*</sup> follows, to wit:

In the county of Lawrence, on the third Mondays of March and Lawrence. September in each year, and continue one week:



- Franklin. In the county of Franklin, on the fourth Mondays of March and September in each year, and continue one week :
- Lauderdale. In the county of Lauderdale, on the first Mondays after the fourth Mondays in March and September in each year, and continue one week :
- Limestone. In the county of Limestone, on the second Mondays after the fourth Mondays in March and September in each year, and continue one week :
- Morgan. And in the county of Morgan, on the third Mondays after the fourth Mondays in March and September in each year, and continue two weeks.
- Ib. Sec. 5.* § 8. The terms of the circuit courts of the several counties, com-  
*5th Circuit.* posing the fifth judicial circuit, shall be commenced and holden as follows, to wit :
- Madison. In the county of Madison, on the first Mondays of March and September in each year, and continue two weeks :
- Marshall. In the county of Marshall, on the third Mondays in March and September in each year, and continue one week :
- Jackson. In the county of Jackson, on the fourth Mondays of March and September in each year, and continue one week :
- De Kalb. In the county of De Kalb, on the first Mondays after the fourth Mondays in March and September in each year, and continue one week :
- Cherokee. In the county of Cherokee, on the second Mondays after the fourth Mondays in March and September in each year, and continue one week in the spring, and two in the fall :
- Benton. In the county of Benton, on the third Mondays after the fourth Mondays in March, and the fourth Mondays after the fourth Mondays in September in each year, and continue until all the business in said court shall be disposed of.
- Ib. Sec. 6.* § 9. The terms of the circuit courts in the sixth judicial circuit,  
*6th Circuit.* shall commence and be holden as follows : the spring terms to be  
*Spring terms* held
- Baldwin. In the county of Baldwin, on the first Monday of March of each year, and to continue in session one week :
- Washington. In the county of Washington, on the second Monday of March in each year, and to continue in session one week :
- Clarke. In the county of Clarke, on the third Monday of March of each year, and during the present year to continue in session two weeks, and after the present year one week :
- Monroe. In the county of Monroe, on the second Monday after the third Monday of March this year, and after this year, to commence on the fourth Monday of March of every year, and to continue in session two weeks :
- Mobile. In the county of Mobile, on the fourth Monday after the third Monday of March during the present year, and after this year, on the second Monday after the fourth Monday of March of each year, and to continue in session till the business of the court is closed :
- Full terms.* The fall terms as follows :
- Baldwin. In the county of Baldwin, on the fifth Monday after the third Mondays of September of each year, and continue in session one week :
- Washington. In the county of Washington, on the fourth Mondays after the third Mondays of September of each year, and continue in session one week :
- Clarke. In the county of Clarke, on the second Monday after the third



Monday of September in each year, and continue in session six judicial days :

In the county of Monroe, on the third Monday of September in Monroe. each year, and continue two weeks :

And in the county of Mobile, on the sixth Monday after the third Mobile. Monday of September of each year, and continue in session till the business is disposed of.

§ 10. The circuit courts of the several counties composing the seventh judicial circuit shall be commenced, and holden as follows, <sup>*Ib. Sec. 7.*</sup> <sup>*7th Circuit.*</sup> to wit :

In the county of Blount, on the fourth Mondays in March and Blount. September in each year, and continue one week :

In the county of Walker, on the first Mondays after the fourth Walker. Mondays in March and September in each year, and continue one week :

In the county of Marion, on the second Mondays after the fourth Marion. Mondays in March and September in each year, and continue one week :

In the county of Fayette, on the third Mondays after the fourth Fayette. Mondays in March and September in each year, and continue one week :

In the county of Pickens, on the fourth Mondays after the fourth Pickens. Mondays in March and September in each year, and continue one week :

And in the county of Sumter, on the fifth Mondays after the fourth Sumter. Mondays in March and September in each year, and continue until the business of the court shall be finished.

§ 11. The spring terms of the circuit courts of the several counties composing the eighth judicial circuit shall commence and be holden <sup>*Ib. Sec. 8.*</sup> <sup>*8th Circuit.*</sup> <sup>*Spring terms*</sup> as follows, to wit :

In the county of Montgomery, on the first Monday in March in Montgomery. each year, and continue three weeks :

In the county of Pike, on the fourth Monday in March in each Pike. year, and continue one week :

In the county of Coffee, on the first Monday after the fourth Mon-Coffee. day in March in each year, and continue one week :

In the county of Dale, on the second Monday after the fourth Dale. Monday of March in each year, and continue one week :

In the county of Henry, on the third Monday after the fourth Henry. Monday of March in each year, and continue one week :

And in the county of Barbour, on the fourth Monday after the Barbour. fourth Monday of March in each year, and continue until the business is finished.

§ 12. The fall terms of the circuit courts of the said several counties, composing the eighth judicial circuit, shall commence and be holden <sup>*Ib. Sec. 9.*</sup> <sup>*Fall terms.*</sup> as follows, to wit :

In the county of Pike, on the third Monday in September in each Pike. year, and continue one week :

In the county of Coffee, on the fourth Monday in September in Coffee. each year, and continue one week :

In the county of Dale, on the first Monday after the fourth Monday Dale. in September in each year, and continue one week :

In the county of Henry, on the second Monday after the fourth Henry. Monday in September in each year, and continue one week :

In the county of Barbour, on the third Monday after the fourth Barbour. Monday in September in each year, and continue two weeks.



Montgomery. And in the county of Montgomery, on the fifth Monday after the fourth Monday in September in each year, and continue three weeks :

*Ib. Sec. 10.* § 13. The solicitor of the eighth judicial circuit, shall not be required to reside in the said circuit, during the residue of the term for which he was elected.

*Ib. Sec. 11.* § 14. The terms of the circuit courts of the several counties, composing the ninth judicial circuit, shall commence and be holden as follows, to wit :

Macon. In the county of Macon, on the third Mondays in March and September in each year, and continue two weeks :

Russell. In the county of Russell, on the second Mondays after the third Mondays in March and September in each year, and continue two weeks :

Chambers. In the county of Chambers, on the fourth Mondays after the third Mondays in March and September in each year, and continue two weeks :

Tallapoosa. In the county of Tallapoosa, on the sixth Mondays after the third Mondays in March and September in each year, and continue one week :

Randolph. In the county of Randolph, on the seventh Mondays after the third Mondays in March and September in each year, and continue two weeks :

Talladega. And in the county of Talladega, on the ninth Mondays after the third Mondays in March and September in each year, and continue two weeks.

1840—(27) § 15. In addition to the terms of the circuit court, as herein provided.  
*Sec. 2.* Two special terms in Mobile, for trial of criminal causes. shall be held in the county of Mobile, there shall be held two terms for the trial of criminal causes and a jail-delivery, to be held on the fourth Mondays of February and June of each year, and to continue in session until the business is closed.

*Ib. Sec. 3.* Grand jury for fall term to serve at special court in February. For spring term, at special court in June. § 16. The grand jury, summoned for the fall term of the circuit, shall serve at the February term of the special court ; and the grand jury, summoned for the spring term of the circuit court, shall serve at the summer term of the criminal court : *Provided*, That the judge of said court shall have power, within the first three days of the special term, to draw a grand jury, or any number of grand jurors, to supply the places of any who shall be sick, absent, or excused from service on the same ; and the said court shall have the same powers, for the purpose of forwarding business, as is confided to the circuit court.

*Ib. Sec. 4.* Petit jury, how summoned. § 17. The judge of the said court shall direct, at such term, the number to be summoned on the petit jury for the ensuing term, which shall be done in the mode prescribed by law.

*Ib. Sec. 5.* Judge not required to alternate. § 18. The judge of the said court, shall not be required to alternate with the judges of the other circuits ; but may do so when he deems it necessary.

*Ib. Sec. 6.* To fix times of pleading, &c., subject to approval of supreme court. § 19. The judge of the said circuit shall have power to fix the times of pleading and rules of practice, and may make such modifications in the process and pleadings in the circuit courts of Mobile, as he may deem necessary : *Provided*, That the same shall be submitted to, and approved by, the judges of the supreme court.

*Ib. Sec. 7.* May fix another time for holding said courts, when. § 20. Whenever, in consequence of the prevalence of any pestilence, contagious disease, or other good cause, it shall become necessary, the judge of the said circuit shall have the power to fix another time for holding the courts aforesaid in the county of Mobile, than is herein prescribed, and all the business, that the court shall have power to transact at the regular term, may be transacted at the adjourned term : *Provided*, That twenty days' notice of the time and



place of holding such adjourned term, shall be given by advertisement in two papers published in the city of Mobile.

§ 21. The special terms, heretofore provided to be holden in the city of Mobile, for the trial of criminal causes, shall be held in the city of Mobile, as heretofore, by the judge of the sixth judicial circuit, according to the act entitled "An Act to organize the tenth judicial circuit, and for other purposes," approved the fifth of February, one thousand eight hundred and forty, and all the powers, conferred upon the judge of the tenth judicial circuit by the said act, shall be exercised by the judge of the sixth circuit.<sup>a</sup>

1843—(28)  
Sec. 14.  
Judge of 6th circuit shall try criminal causes in Mobile, at special term.

a See § 19.

§ 22. It shall be lawful for the special term of the circuit court of Mobile county, for the trial of criminal causes, and a jail-delivery, to be holden at any place in the city of Mobile, that the judge of said court may select.

1843—(54)  
Sec. 1.  
To determine place in the city for holding court

§ 23. The said circuit courts shall be holden at the court-houses of the several counties, respectively, or at such other places as may be appointed by law.

Courts, where held.

§ 24. A special session of any circuit court may be held by order of the judge or judges of the same, whenever it may be necessary for the trial of criminal causes: and the said judges at their discretion, shall have power, on the application of any person charged with a criminal offence, to hold a special session for the trial of such person, and the said judges shall direct the sheriff of the county in which such special session shall be holden, to return thereto twenty-four persons properly qualified to serve as jurors, who shall be selected in the manner now prescribed by law in such cases—any, or all of whom failing to attend, or being challenged or set aside, a jury of by-standers shall be empaneled for the trial of the cause.

1807—(17)  
Sec. 12.

[1819—(6)  
Sec. 13.]  
Special sessions for trial of criminals.

§ 25. Whenever it shall become necessary, by the existing law, that the judge of any circuit should hold an intermediate court for any county, any judge not presiding in that circuit may hold the same.

1826—(38)  
Sec. 2.  
Extra court by any judge

§ 26. If it should so happen, that any of the circuit courts should not be able to dispose of all the business depending in any of said courts at their regular terms, it shall be the duty of the judge of the circuit in which such undisposed of business may be, at a convenient time between the regular terms of said courts in which such undisposed of business may be, to hold a special term or terms of such courts; which term and time shall be fixed, and notice thereof given, at the preceding regular term, by the presiding judge of said court, and notice thereof given, by order of said court, in some respectable newspaper, in or nearest to said circuit, to which intermediate court a jury shall be summoned, as directed by law, to the regular terms of said court, as well as witnesses, whose testimony may be desired in said court: *Provided*, That the judge shall not be required to hold any one of said intermediate courts, longer than two weeks, which court shall be considered a continuance of the regular term: *Provided*, That nothing in this act shall be construed to prevent any one of the circuit judges in this state, from holding any of such intermediate courts as may be agreed on by them: *Provided, also*, That said intermediate courts shall be devoted exclusively to the civil docket.

1b. Sec. 3.  
Judges shall hold intermediate term for disposal of unfinished business.

To continue only 2 weeks

To be devoted to the civil docket.

§ 27. Any judge of the circuit court, whenever he may deem it necessary, shall hold a special court for the trial of any slave or slaves, prosecuted for a capital offence, and for this purpose the clerk and sheriff shall be ordered to summon twenty-five jurors to attend the said court for the trial of such slave or slaves.

1b. Sec. 4.  
Judge may hold special court for trial of slaves.



1807—(14)  
 Sec. 10.  
 Sheriff to  
 summon 3  
 constables to  
 attend court.  
 1807—(19)  
 Sec. 1.  
 Powers and  
 duties of the  
 judges.

§ 28. It shall be the duty of the sheriff to summon three constables to attend each circuit court, who shall attend accordingly, or pay a fine at the discretion of the said court, not exceeding ten dollars.

§ 29. The circuit judges, and every one of them, shall have power and authority, when, and as often as there may be occasion, to issue forth writs of *error*, *certiorari*, and *habeas corpus*, and all other remedial and other writs and process returnable to either of the circuit courts, and which are grantable by the judges, by virtue of their office. They shall, in their said courts, hear and determine all causes, matters, and things, cognizable in the same; and also hear and determine all, and all manner of pleas, complaints, and causes, which shall be removed or brought there from any court to be holden for the respective counties, and examine and correct all, and all manner of errors of the judges of the county courts, in their judgments, process, and proceedings in the said courts, as well in all pleas of the government, as in all pleas, real, personal, and mixed, and thereupon reverse or affirm the said judgments, as the law doth or shall direct. They shall also examine, correct, and punish the contempts, omissions, neglects, favors, corruptions, and defaults of all or any of the justices of the peace, sheriffs, coroners, clerks, and other officers within their respective counties; and shall award process for levying, as well such fines, forfeitures, and amercements, as shall be estreated into the superior courts, as the fines, forfeitures, and amercements, which shall be taxed and set there and not paid, to the uses to which they are or shall be appropriated; and generally, shall minister ample justice to all persons, and amply exercise the jurisdiction and powers herein mentioned, concerning all and singular the premises according to law.

*Ib* Sec. 6.  
 Judges to be  
 justices of  
 assize, jail-  
 delivery, &c.

§ 30. The said judges shall have power, from time to time, to deliver the jails of all persons who shall be committed, for treasons, murders, and other crimes and misdemeanors whatsoever; and for that end, from time to time, to issue forth such necessary precepts and process, and force obedience thereto, as justices of assize, justice of oyer and terminer, and of jail-delivery, may or can do within the United States.

*Ib* Sec. 17.  
 Court may  
 grant judgment  
 and  
 award execution.

§ 31. The said courts, and each of them, may grant judgment according to the principles and usages of law, in all cases cognizable before them, and award execution directed to the sheriff, or other proper officer of any county in this state, which shall be executed and returned, according to the commands thereof.

*Ib* Sec. 18.  
 Grand jury  
 to be empaneled.

§ 32. At each of the said circuit courts, a grand jury of a competent number of good and lawful men of the county for which such court is held, shall be returned and empaneled agreeably to law, who shall inquire and true presentments make, of all crimes, offences, and misdemeanors committed in their county; and thereupon, the judge of the said circuit court, is hereby empowered, authorized, and required, to try all offenders so presented, and upon legal conviction by a jury, or on confession of guilt in open court, to proceed to judgment and award execution thereon, as the law directs: *Provided*, That the judge of the circuit court may, at his discretion, on a point reserved, motion in arrest of judgment, or for a new trial, in any criminal case, respite the judgment or sentence, and reserve such point or motion for the consideration of the supreme court, at their next succeeding term; and in such case, the supreme court shall

Court to try  
 offenders.

Judge may  
 reserve  
 points for su-  
 preme court.



pronounce judgment, sentence, or decree, as the law directs, and award execution accordingly.<sup>1</sup>

§ 33. The circuit courts shall be holden by one judge, who shall have been elected or appointed, and qualified in manner and form prescribed by the constitution; and shall have cognizance and legal jurisdiction of all pleas, real, personal, and mixed; and also of all suits and demands relative to legacies, filial portions, and estates of intestates; all pleas of the state, and criminal matters of what nature, degree, or denomination soever, whether brought before them by original or mesne process, or by *certiorari*, writ of *error*, appeal from any inferior court, or by any other ways or means whatsoever; and the circuit courts are hereby declared to have as full power and authority to give judgment, and to award execution, and all other necessary process thereupon, as heretofore belonged to the superior courts of law and equity in the territory; and to have, use, exercise, and enjoy the same powers and authorities, rights, privileges and preeminences, as were had, used, exercised, and enjoyed, by the said superior courts heretofore; except where it is otherwise directed by this or some other act, or where such authorities, rights, privileges, or preeminences, or any of them, may be inconsistent with, or repugnant to, the present form of government.

§ 34. Where any circuit judge shall fail to attend on the first day of any term, the business thereof shall stand adjourned until the second day; and if the judge shall fail to attend on the second day, the business shall stand adjourned until the third day; and if the judge does not attend before the hour of three o'clock in the evening of the third day, it shall be the duty of the sheriff to adjourn all suits, causes, and prosecutions therein depending, to the next succeeding term of the circuit court; and the clerk of such court shall enter on his docket a continuance of all such suits and causes, and shall bind over all witnesses on behalf of the state, to appear at the next term of the said court, unless previously bound over: *Provided*, That nothing, herein contained, shall be so construed as to prevent the parties from making up their pleadings on the appearance causes.

§ 35. When the circuit judges shall have been elected, in manner prescribed by the constitution, they shall be commissioned by the governor, and shall hold the circuit courts at the times and places designated and established by law; and shall reside within the circuit to which they may be severally elected; and in case of the removal of any such judge out of the circuit to which he is elected, his office shall be vacated thereby: *Provided*, That nothing, in this act contained, shall be so construed as to prevent the interchange of ridings by such judges in their several circuits, in the manner hereafter pointed out, that is to say: the judges, holding the courts aforesaid, shall so alternate, that no one judge shall hold the courts of the same circuit for two courts in succession, unless called on to do so by the judge whose duty it may be to hold such circuit, on account of sickness, or other inability to attend.

§ 36. When the clerk of any circuit court shall give a certified copy of any decree, judgment, record or proceeding, of any superior court of law and equity, heretofore existing, the papers and records of which may be delivered to him, pursuant to the directions of this

1819—(6)  
Sec. 3.  
Court holden by one judge  
Jurisdiction of circuit court.

Powers of territorial, transferred to circuit courts.

Ib. Sec. 4.  
Judge not attending, sheriff to adjourn court from day to day.  
Clerk to enter continuance of causes, and bind over witnesses,

but parties may make up their pleadings.

Ib. Sec. 8.  
Judges to be commissioned by the governor, and reside in their respective circuits.

Judges shall alternate.

How.

Ib. Sec. 9.  
Clerk may certify records of superior court, transferred to him.

<sup>1</sup> Under section 2, chap. 13, "Penal Code," a writ of error may issue to the clerk of the circuit court, upon the order of a judge of the supreme court, in vacation, or by the supreme court when in session.



act, the same faith and credit shall be given to such certified copy, as to a certified copy of any record or proceeding of the circuit court, to which such clerk may belong; and it shall be the duty of the clerks of said superior courts of law and equity, to transfer all the proceedings, suits, and causes, within the same, to the circuit courts of the respective counties, in which such superior courts have been holden.

*Ib. Sec. 13.*  
Certain days  
to be set  
apart for tri-  
al of crimi-  
nal causes.

§ 37. The judges of the circuit courts within their respective circuits, shall set apart a particular day, or particular days, of each term, for the trial of criminal causes; and all fines inflicted and forfeitures accruing in the several circuit courts, shall go to, and be applied to the use of the county in which they may be thus inflicted, or shall accrue.

*Ib. Sec. 15.*  
Records to  
be read in  
open court,  
and signed  
by the judge.

§ 38. The records of the respective courts within this state, for each preceding day of every session, shall be read in open court on the morning of the succeeding day, except on the last day of the term, on which day they shall be signed by the judge presiding in said court.

1819—(10)  
*Sec. 5.*  
Records of  
former super-  
ior courts,  
to be kept by  
clerks of cir-  
cuit courts.

§ 39. The clerks of the superior courts of each county shall deliver over to the clerks of the circuit court of the same, all records, books, and papers, belonging to the office of clerks of the superior courts, and the clerks of the said circuit courts respectively, shall keep the same in their care, in the same manner as the other records and papers of their respective offices.

#### COUNTY COURT.

1821—(4)  
*Sec. 2.*  
Judges.  
[*a Amend-  
ment to Con-  
stitution,  
1830.*]  
Powers and  
duties of  
court.

§ 1. There shall be elected by joint vote of both houses of the general assembly, one judge of the county court, for each county in this state, who shall hold his office for the term of six years. The county courts so established and organized, and the judges thereof, respectively, shall be, and are hereby vested with all the powers and jurisdiction, and shall perform the duties, which now appertain to the county courts in the first section of this act mentioned,<sup>1</sup> and to the chief justice thereof, except in cases where it may be otherwise directed by this or any subsequent act:—Each judge shall, before entering on the duties of said office, before a justice of the peace, take and subscribe the following oath or affirmation, viz: “I, , do solemnly swear (or affirm) that I will impartially and diligently, and without being influenced by fear, favor, or affection, faithfully execute the office of judge of the county court of county, to the best of my skill and ability, so long as I continue to hold the same;” and shall also take the other oaths required of public officers of this state, (which oaths by him so subscribed, he shall cause to be filed in the clerk’s office of said court;) and shall enter into bond, with good and sufficient security, to be approved of, and for such sum as may be directed by, the judge of the circuit court, not less than five thousand dollars, payable to the governor for the time

Judges’  
oaths.

Bond,

<sup>1</sup> The county court composed of five associate justices, to be elected by the legislature, by act of December 14, 1819, which succeeded to the powers and duties of the county and orphans’ court, held by five justices, appointed and commissioned by the governor, pursuant to the act of February, 1807, § 11. The five justices were required to elect one of their own number to preside, who was to be styled “Chief Justice,” § 40.



being, and his successors in office, conditioned for the faithful performance of the duties assigned him; which bond shall be filed in the office of the secretary of state, subject to be sued on by any person or persons, for any injury, waste, or damage sustained in any estate, in consequence of any neglect or omission of taking good and sufficient security from guardians, executors, or administrators.<sup>1</sup>

§ 2. The clerks of the inferior courts shall be clerks of the said county courts, respectively, and shall duly enter all order and decrees made by their respective courts, or the judge thereof; issue all citations and other process which may be necessary, in proceedings before said courts and the judges thereof, respectively; they shall have custody of the records and papers of the orphans' and county courts heretofore established in their respective counties; shall perform the several duties now appertaining to the office of clerk of the county court, and be entitled to the fees now allowed therefor.

§ 3. All bonds and recognizances, which may have been given, or made payable to the justices of any county court, or orphans' court, or to the chief justice of such courts, heretofore established by the laws of the Mississippi Territory, or of the Alabama Territory, or of this state, shall inure and be payable to the judge of the county court, of such county, and his successors in office, for the use of the county; and suits may be prosecuted, and judgments recovered thereon, in the name of such judge, or any of his successors, against all or any one, or more of the obligors to any such bond.

§ 4. From any judgment or order final, whether in vacation or term time, an appeal or writ of error, shall lie to the circuit (1) or supreme court, in the same manner as upon judgments of the circuit courts.

§ 5. The judges of the county courts during their terms, shall have jurisdiction, and may take cognizance of all actions of a civil nature, in their respective counties, excepting, however, real actions, actions of *ejectment* and *trespass quare clausum fregit*.

§ 6. The county courts shall not take cognizance of any suit or demand, where the matter in controversy is cognizable before a justice of the peace, except by appeal from such justice, or by *certiorari*.

§ 7. The said county courts shall, in addition to the jurisdiction heretofore given to the county court, and orphans' court, in the territorial government, have concurrent jurisdiction with the circuit court, in all actions of *debt*, *assumpsit*, *case*, *covenant*, *trespass*, and *assault and battery*.

§ 8. The judges of the county courts, within their respective counties, shall have full power, concurrent with the power of the judges of the circuit courts, to grant writs of *certiorari* and *superseadeas*, returnable to the county courts, under the same regulations now in force relative to granting the aforesaid writs by judges of the circuit courts: *Provided*, That nothing, herein contained, shall be so construed, as to take away from the circuit courts, jurisdiction of

to be filed in  
secretary of  
state's office.

Th. Sec. 4.  
Clerk's duty,  
and fees.

Th. Sec. 20.  
Bonds given  
to former  
judge, to  
inure to  
present  
judge.

Th. Sec. 23.  
Appeals and  
writs of error  
may lie.

1807—(20)  
Sec. 17.  
General civil  
jurisdiction  
of the county  
courts.

1812—(1)  
Sec. 5.  
Appeals  
from justices  
of the peace.

1819—(6)  
Sec. 23.  
Concurrent  
jurisdiction  
in debt, as-  
sumpsit,  
case, &c.  
[a 1822—(11)

Sec. 4.]  
1822—(11)  
Sec. 7.  
May grant  
writs of cer-  
tiorari and  
superseadeas.

<sup>1</sup> The judge's bond, before being transmitted to the secretary of state, must be recorded in the office of the clerk of the circuit court.—See "County Officers,"—§ 15.

(1) Circuit court affirming judgment of county court on writ of error, may render such judgment as the county court should have rendered, unless the record show matter requiring a trial by jury. *Lane v. T. and J. Kirkman, Min. Rep.* 411.



the aforesaid writs, granted by the judges of the circuit courts, respectively.

*Ib. Sec. 13.*  
Counsel  
elected  
judge, causes  
to be removed.

§ 9. If any person shall be appointed judge of any county court in this state, who was employed as counsel in any cause depending in said court, the said cause shall be removed to the circuit court of said county.

1831—(13)  
Sec. 1.  
Causes to be  
transferred  
to circuit  
court, when  
either party  
is related to  
the judge.

§ 10. If any suit shall be commenced, or be now pending, in any of the county courts of this state, where any of the parties thereto shall be related to the judge of said court, by affinity or consanguinity, it shall be lawful for the judge of said court, to order the cause to be transferred to the circuit court of the county in which such suit may have been commenced; and it shall be the duty of the clerk of the county court, in such case, to deliver all the papers in such cause, together with a certified copy of the order of transfer, to the clerk of the circuit court of said county.

*Ib. Sec. 2.*  
Cause so  
transferred  
to be placed  
on trial  
docket.

§ 11. It shall be the duty of the clerk of the circuit court to which any cause may be transferred as aforesaid, to place the cause on the trial docket for the next succeeding term of said court; and from the time said papers may be so delivered to the clerk of any circuit court, it shall, in all respects, stand in the same situation as if it had been regularly commenced in said court, and it shall be tried at the next succeeding term, unless continued for good cause, as in other cases.

1819—(6)  
Sec. 31.  
To observe  
same rules of  
practice, as  
in circuit  
court.

§ 12. The same rules of practice, methods, and proceedings, shall be had, kept, and observed, by the county courts, and the officers thereof, in granting, issuing, executing, and returning process, and awarding judgments on judicial attachments, and the like remedy, recovery, and relief against the sheriff and bail, as in like cases are provided by law, in suits depending, or to be commenced, in the circuit courts within this state.

*Acts consolidated.*  
1821—(4)  
Sec. 1.  
&c. to 1843,  
inclusive.

§ 13. The county courts hereby established and organized, shall be held by the respective judges thereof twice a year in each county in the state; each session shall continue twelve judicial days, unless the business thereof be sooner completed, except as hereinafter specified; and said session shall commence as follows, to wit: *In the county of*

County  
courts, when  
held.

Autauga: Third Mondays in February and August, and may continue six judicial days:

Baldwin: Third Mondays in January and June:

Barbour: Second Mondays in February and August, and may continue until business is disposed of:

Benton: Second Mondays in January and July, and may continue until business is disposed of:

Bibb: Second Mondays in February and July:

Blount: Third Mondays in February and August:

Butler: Tuesday after the first Monday in February, and on the fourth Monday in July, and at February term may continue until business is disposed of:

Chambers: Fourth Mondays in January and July, and may continue until business is disposed of:

Cherokee: First Mondays in February and July:

Clarke: Second Mondays in February and August:

Coffee: Fourth Mondays in June and December:

Conecuh: First Monday in February, and third Monday in June:

Coosa: Fourth Mondays in January and July, and may continue until business is disposed of:

Covington: Second Monday in January, and first Monday in July:

Dale: First Thursday after third Mondays in February and August, and may continue six judicial days:



Dallas : Third Monday of February and second Monday of August, and may continue six judicial days : County courts, when held.

De Kalb : Third Mondays of February and August, and may continue one week :

Fayette : Third Mondays of February and August, and may continue one week :

Franklin : Second Mondays of February and July, and may continue one week :

Greene : Fourth Monday of January and third Monday of July :

Henry : Third Mondays of February and August, and may continue six judicial days :

Jackson : Second Mondays of February and August :

Jefferson : First Tuesday in February and August, and may continue six judicial days :

Lauderdale : Fourth Mondays in January and July :

Lawrence : Third Mondays in January and July :

Limestone : Third Mondays in January and July :

Lowndes : Second Mondays in February and August :

Macon : Third Mondays in February and August, and may continue one week :

Madison : Third Mondays in June and December :

Marengo : Third Mondays in March and September :

Marion : Second Mondays in March and August, and may continue six judicial days :

Marshall : Fourth Mondays in February and August, and may continue one week :

Mobile : Second Mondays in February and June, and may continue until business is disposed of :

Monroe : Third Monday in January and second Monday in July :

Montgomery : Third Mondays in June and December, and may continue until business is disposed of :

Morgan : Third Mondays in June and November, and may continue until business is disposed of :

Perry : Wednesday after first Monday in February, and fourth Monday in July, and at February term may continue four judicial days, and at July term, twelve :

Pickens : Fourth Wednesdays in January and July, and may continue six judicial days :

Pike : Thursday after first Monday in February and August :

Randolph : Fourth Mondays in January and July, and may continue one week :

Russell : Fourth Mondays in February and August :

Shelby : Third Mondays in February and August.

St. Clair : First Mondays in June and December :

Sumter : Second Mondays in February and July, and may continue until business is disposed of :

Talladega : Third Monday in July, and second Monday in February, and may continue two weeks :

Tallapoosa : First Mondays in March and September :

Tuskaloosa : Second Mondays in May and December, and may continue until business is disposed of :

Walker : Second Mondays in August and February :

Washington : Third Mondays in January and July :

Wilcox : Fourth Mondays in January and July :

§ 14. If the business of any of the said county courts cannot be completed, ended, and finished, *within the time limited for holding* 1807—(20)  
Sec. 23.



Unfinished business to be laid over. *the sessions thereof*,<sup>1</sup> all such actions, causes, and matters, that shall be depending in said court, shall remain undetermined, and be laid over to the next succeeding term.

*Ib. Sec. 24.* No discontinuance of causes, for failure of court; but business to stand continued to succeeding term. § 15. None of the said county courts, nor any process in any of them depending, shall be discontinued for or by reason of the judges failing to hold court upon the day by law appointed, or of any alteration of any of the days appointed for holding the said courts; but in every such case, all such process, matters, and things depending, shall stand continued, and all appearances upon returns of process, shall be made to the next succeeding term in course, in the same manner as if such succeeding term had been the same term to which such process had stood continued; or such returns, or appearances, had been made; and all bonds and obligations for appearances, and all returns shall be of the same force and validity for the appearance of any person or persons, at such succeeding term; and all summonses for witnesses as effectual, as if the next succeeding term had been expressly mentioned therein.

1840—(28)

*Sec. 1.* Judges of county courts may grant writs of *certiorari*, returnable to circuit court.

*Sec. 1.* Judges of county courts, if licensed, may practice law—on what conditions. 1835—(23) Preamble.

§ 16. The judges of the county courts of their respective counties, shall have power to grant writs of *certiorari*, returnable to the circuit courts, in the same manner that they are allowed to grant the same, returnable to their own courts.

*Sec. 1.* Judges of county courts, if licensed, may practice law—on what conditions. 1835—(23) Preamble.

§ 17. Judges of the county courts of this state, who have been regularly licensed to practice law, shall be allowed to practice in the several counties of this state: *Provided*, That they shall not be engaged, directly or indirectly, in any cause which may have been tried or determined before them; *And provided, further*, That they shall not be absent at the time of holding any court, or on any return day, required by law, for them to hold or appoint.

*Whereas*, doubts have arisen whether or not judges of the county courts could make decrees for the sale of real estate of deceased persons, and exercise other powers in relation to the same, at the terms of the county courts held in vacation; for remedy whereof,

*Sec. 1.* Applications for dower may be heard.

§ 18. *Be it enacted, &c.* That it shall be lawful for the judges of the several courts in this state, to hear and determine all applications for dower, as well as applications to sell the real estate of deceased persons, at any of the terms of the said courts.

*Ib. Sec. 2.* Also, all business relating to settlement, &c. of estates.

§ 19. All business of what kind soever, in relation to the settlement and distribution of the estates of deceased persons, may be heard and determined by the judges aforesaid, at the terms of the orphans' courts.

*Ib. Sec. 3.* Widow may dissent from will, and claim dower at special terms.

§ 20. When the widow of any deceased person may be dissatisfied with the provisions made for her by the last will and testament of her deceased husband, it shall be lawful for any such widow, to signify her dissent thereto, at any term of the orphans' court, which dissent shall be entered by the clerk, on the minutes of said court; and then, she shall be endowed as now provided by law.

#### JURISDICTION AND DUTIES, WITH RESPECT TO CONVEYANCES, WILLS, INTESATES' ESTATES, INFANTS, LUNATICS, &c.

1806—(1)  
*Sec. 1.*  
County

§ 21. The judge of the county court of each county in this state, shall hold and keep a court of record, to be styled and called "The

<sup>1</sup> Originally, "within six days from the commencement of the court." The sessions of all the courts were then restricted to six days. It is altered to correspond with the enlargement of the terms.



Orphans' court of the said county," for taking the probate of wills, and granting letters of administration on the estates of persons deceased, being inhabitants of, or resident in, the same county, at the time of their decease; for appointing guardians to minors, idiots, lunatics, and persons *non compos mentis*; for examining and allowing the accounts of executors, administrators or guardians; with full jurisdiction of all testamentary and other matters pertaining to an orphans' court or court of probate, in their respective counties.

§ 22. The granting of letters of administration, of the estate of any intestate, and the hearing and determining the right of the same, shall pertain to the orphans' court of the county, in which the intestate had at the time of his or her death, a mansion house, or known place of residence. And if he or she shall have no such known place of residence, then to the orphans' court of the county where the intestate shall die, or that wherein his or her estate, or the greater part thereof, shall be; and the court taking the probate of any will, or granting letters of administration, and the executors or administrators thereby authorized, shall have the same jurisdiction, power, and authority, in and over the decedent's estate, in any part of this state, as if it were situate in the proper county of such orphans' court.

*Ib. Sec. 19.*  
Granting administration to appertain to court of county where decedent had residence, or where he died, or his estate lies.

§ 23. The judge shall cause to be kept by the register of the orphans' court, a docket in which shall be entered, in vacation, the names of all accountants, applicants for the probate of wills, or for letters of administration or guardianship, in the order as to priority of time such accounts were exhibited, or applications were made, to the end that such accounts may be allowed, and applications heard and determined at the next term of said court; and shall, moreover, direct all necessary notices and citations to those principally interested, if in this state, to appear and show cause at the next term, why such application should not be granted: *Provided*, That wills may be proved, and letters of administration and guardianship may be granted, where no application has been made to the judge in vacation.

*Ib. Sec. 22.*  
Register to keep a docket of applications for probate of wills, &c.

§ 24. The clerk of the county court of each county shall, by virtue of his office, be register of the orphans' court of the same county, and shall take and subscribe an oath or affirmation in open court, for the faithful discharge of the duties of his office. And it shall be the duty of said register to keep and preserve all records, files, papers, and proceedings of the said court, as an orphans' court, separate and distinct from the records, files, and proceedings of the county court; to record all last wills and testaments, duly proved and approved; all accounts finally allowed; all inventories and appraisements duly made and sworn to; to issue all citations, subpoenas, and other process, as issue of course, and all such as are directed by the court in term time, or judge in vacation; and to do and perform all those things that appertain to the office of a register, or clerk of said orphans' court. And the said register's office shall be under the direction of the court in term time, and of the said judge in vacation.

*Ib. Sec. 23.*  
County clerk to be clerk *ex officio*, but to keep a separate docket. His duties.

§ 25. Letters testamentary, letters of administration, and letters of guardianship shall be tested in the name of the said judge, and signed and issued by the register. And bonds given by executors, (in such cases as they are directed to give bond,) by administrators and guardians, and all other bonds taken in said court, shall be made payable to said judge, and his successors in office.

*Ib. Sec. 25.*  
Letters and process from orphans' court, how tested.



1807—(30)

Sec. 13.

May take & record conveyances of estates.

Ib. Sec. 14.

In testamentary cases, an appeal may lie to the circuit court.

§ 26. The county courts shall have full power and authority to administer on the estate of an intestate, shall think himself injured by order of the court for letters testamentary, or of administration, he shall be entitled to an appeal to the circuit court of the county or district where such order shall have been made, subject to the same regulations as in other cases of appeal; and such circuit court is hereby declared to have cognizance thereof; and shall at their sitting next succeeding such appeal, determine the same, and upon such determination had, such court shall proceed to grant letters to the persons entitled to the same; he or she, (if on administration,) giving bond with sufficient security, for the faithful discharge of the trust; which bond and proceedings shall be transmitted by the clerk of the said circuit court, to the office of the county court from whence the appeal issued, there to be entered and filed with the other testamentary transactions in such office. And for the better preservation of wills and other papers, relative to the estates of deceased persons: *Be it enacted*, That all original wills, inventories, and accounts of executors and administrators, shall remain in the clerk's office, among the records of the respective counties where the same shall be proved or exhibited; and to the said wills, inventories, and accounts, any person may have free access, except for the time they shall or may be removed before any other court, upon the determination of any controversy.

Wills, inventories, &c. to remain in the clerk's office.

Ib. Sec. 15.

To have care of orphans and their estates.

§ 28. The judges of the several county courts in this state, shall have authority, within their respective jurisdictions, from time to time, to take cognizance of all matters concerning orphans and their estates, and to appoint guardians in such cases where to them it shall appear necessary, and shall take good security of all guardians by them to be appointed, for the faithful discharge of the trust committed to them.

1819—(6)

Sec. 34.

To appoint guardians to idiots and lunatics.

§ 29. It shall be lawful for every orphans' court within this state, where any idiots or lunatics shall be within the jurisdiction thereof, to appoint them, or either of them, a guardian, taking bond with approved security, for the faithful administration of the trust reposed in such guardian, in the same manner as bonds are taken from the guardians of orphans; and such guardian, when so appointed, shall continue during the pleasure of the court, and shall have the same power, to all intents, constructions, and purposes, and shall be subject to the same rules, orders, and restrictions, as guardians of orphans are: such lunacy to be ascertained by the inquisition of a jury, by virtue of a writ to be issued by the court, to the sheriff of the county for that purpose.

1821—(4)

Sec. 11.

Inquisitions, as to idiots, lunatics, &c.

§ 30. Inquisitions as to idiots, lunatics, or persons *non compos mentis*, may be ordered in vacation, or in open court, and made returnable as process of citation. On sufficient cause shown, the judge may order any such inquisition to be had before him: in other respects, the same proceedings shall be had thereon as heretofore.<sup>1</sup>

<sup>1</sup> The act of February 10th, 1806, Sec. 51, contains the following provisions with respect to inquisitions of lunacy: "The orphans' court are hereby authorized, &c. by writ, to direct the sheriff of the county to summon twelve good, discreet, and lawful men of the county, and neighborhood of the residence of such



§ 31. The judge of each orphans' court, shall have power within the county to take the probate of wills, grant and repeal letters testamentary and letters of administration, appoint and displace guardians of infants, and idiots, lunatics, and persons *non compos mentis*, and to make all necessary orders for the issuing process and other purposes, within his jurisdiction, according to such regulations as are, or may be, established by law in such cases: each judge shall, by order made in open court, appoint certain days, "*not less than one day in every period of each month*", for the return of process in such cases as he is competent to hear and determine in vacation, and on each return day, shall attend at the court-house, or place appointed for holding the county court, to hear and determine such cases. All process issued in such cases shall be made returnable to the next return day, or if the party applying therefor shall so require, to some other return day, or stated session. If on any return day, the business then required to be acted on, shall not be completed, the judge shall attend on the succeeding day, and from day to day, until the business shall be completed: but for special cause he may adjourn any part of the business to such other day as he may appoint. The clerk of the court and sheriff shall attend the sittings of the judge on return days, as well as at the stated sessions.

*Ib. Sec. 5.*  
Judge's  
powers ex-  
tended.

[a 1921—(24)  
Sec. 4.]  
Special ses-  
sions each  
month.

To sit from  
day to day.

Clerk and  
sheriff to at-  
tend the spe-  
cial courts.

§ 32. In all cases where it may be necessary to have any matter, depending before any of said courts, or the judge thereof, on any return day, tried by a jury, the sheriff, by order of the judge, shall forthwith summon and empanel a jury.

*Ib. Sec. 6.*  
Jury may be  
empaneled.

§ 33. Where any person may have died, having no known place of residence within any county of this state, his or her will may be proved, and letters testamentary, or of administration thereon granted, in the county where the lands devised, or any part thereof lie; or the will may be proved, and letters testamentary granted, or administration may be granted, in any county where the goods and chattels, and debtors, or any part thereof, of such testator, or intestate, may be.

*Ib. Sec. 7.*  
Probate of  
wills, &c.  
when de-  
ceased had  
no known  
residence.

§ 34. On application for the probate of any will, or for letters of administration, the clerk shall issue a citation requiring the sheriff to summon the widow or next of kin of the deceased, to appear at some return day in said process named, (or appear at the next stated session,) and show if they have anything to allege against such application; and subpoenas for such witnesses as the applicant may name on the return of such process, executed on the proper parties a reasonable time before the return day thereof, (allowing one day for every twenty miles he, she, or they, may reside from the place of holding the court,) or on satisfactory proof that the deceased has no widow or kindred resident in the state, the application may be heard and determined: the court, at any stated session, may hear and determine such applications, though no citations may have been executed or issued, on proof of reasonable notice thereof, as aforesaid, or on proof that the deceased has no widow or kindred resident in the state.

*Ib. Sec. 8.*  
Notice shall  
be given to  
the widow  
or next of  
kin, on appli-  
cation for  
probate of  
will, or let-  
ters of ad-  
ministration.

person, (i. e. the person supposed to be lunatic, *non compos mentis*, &c.) to make inquisition thereof, on oath; and if the person said to be an idiot, lunatic, or *non compos mentis*, shall be adjudged by such inquisition, (or the major part of them,) to be incapable of taking care of him or herself, and they shall certify the same under their hands and seals, to the orphans' court, the court shall assign some suitable person to be the guardian," &c.



*Ib. Sec. 9.*  
Jury may be  
empaneled  
to try valid-  
ity of a will.

§ 35. When the validity of any will shall be contested, or doubts may arise as to its validity, or as to any fact which, in the opinion of a jury, it may be necessary to have ascertained by the verdict of a jury, before awarding any order, judgment, or decree, such judge, at any stated session, or on any sitting held in vacation, according to the provisions of this act, may forthwith cause a jury to be summoned and empaneled, to try such issues, or inquire of such facts as, under his direction, shall be submitted to their decision, and shall cause them to be sworn, in such form as the case may require.

*Ib. Sec. 10.*  
Citations to  
produce  
wills.

§ 36. If any of said judges shall be informed that any will, whereof he is competent to take the probate, is in possession of any person, such judge may order a citation to issue, returnable as in other cases, requiring the person so charged, and all others who may have possession of such will, to produce the same before him, at or before the return day of such process; and on its being duly ascertained by proof, that any person or persons on whom such process has been executed, conceals, or improperly delays to produce such will, such judge may commit him, her, or them, to jail, to remain in custody until the will shall be produced, and may make such other orders as may seem necessary in the case.

*Ib. Sec. 24.*  
Evidence of  
settlement  
with execu-  
tors, &c., to  
be preserved  
To be evi-  
dence in  
suits.

§ 37. The documents and evidence of all settlements made with executors, administrators, and guardians, shall be carefully preserved by the clerk of said county court, and the settlement entered of record; which evidence, vouchers, documents, and settlement, shall be good evidence in any suit for or against such executor, administrator or guardian, and shall not be impeached, except for fraud in obtaining the same.

1822—(3)  
Sec. 1.  
Judges to  
give notice  
required by  
law of ex'rs.

§ 38. Hereafter, it shall be the duty of the judges of the county courts, in their respective counties, to give the notice, now required by law to be given by executors, administrators, or guardians, of the term of the said court, at which any executor, administrator, or guardian may be required by said judge to present for allowance, his settlement or account current, made as prescribed by law in vacation.<sup>1</sup>

*Ib. Sec. 2.*  
To render  
judgment for  
printer's fees

§ 39. The said judge is hereby authorized to render judgment against any executor, administrator, or guardian, for whom he is required by this act to give notice, in favor of the printer, for any sum which said judge may think reasonable, for publication.

1826—(25)  
Sec. 1.  
Clerk may  
administer  
necessary  
oaths to ex'rs  
& adm'rs.

§ 40. It shall be lawful for clerks of the respective county courts to administer the necessary oaths to all executors and administrators, upon their obtaining letters testamentary or of administration, and all or any oath or oaths respecting their several duties which may or can be administered out of term time, by a justice of the peace, or by said county courts, acting in pursuance of their several jurisdictions.

*Ib. Sec. 2.*  
False swear-  
ing, perjury.

§ 41. Any person or persons swearing falsely, when an oath is administered in pursuance of the authority given to such clerk in the preceding section of this act, shall be liable to all the pains and penalties inflicted on those guilty of perjury, in like manner as if said oath or oaths had been, or were administered in a court of record.

1830—(11)  
Sec. 1.  
Final settle-  
ments have  
force of judg-

§ 42. All decrees made by the orphans' court on final settlements on the accounts of executors, administrators, and guardians, shall have the force and effect of judgments at law, and executions may

<sup>1</sup> See "Executors and Administrators,"—§ 27.



issue thereon, for the collection of the several distributive amounts against such executor, administrator, or guardian.

§ 43. When distribution of real or personal estate is decreed by the said court, each distributee, heir, or devisee, may and shall have his or her writ of execution, or attachment, one or both in the case of personal estate; and in the case of real estate, a writ of *habere facias possessionem*, against the executor, administrator, or guardian; and the sheriff to whom such writ shall be directed, shall execute the same according to the commands thereof.

§ 44. The county courts, on final settlements of executors, administrators and guardians, shall assess and insert in their decree, the amount of their distributive share.

§ 45. Whenever any execution shall have issued, on any decree made by the orphans' court, and final settlement of the accounts of executors, administrators, or guardians, and is returned by the sheriff, "no property found," generally, or as to a part thereof, execution may and shall forthwith issue against the securities of such executors, administrators or guardians.

§ 46. In all settlements hereafter to be made by executors, administrators and guardians with the orphans' court, in which the judge of said court may have been employed as counsel, or may be otherwise interested in such settlement, it shall be the duty of said judge, to give immediate information of the fact to one of the judges of the supreme or circuit courts, who shall thereupon issue a commission, to three persons of the proper county, directing and empowering them to proceed to make said settlement under the rules and regulations now prescribed by law.

§ 47. Such settlement, when made as aforesaid, shall be duly recorded by the clerk of the county court, and shall have all the force and effect of settlements made by the judge of said orphans' court.

§ 48. In case of the neglect for an unreasonable time, or the refusal of said judge of the orphans' court to give the notification required in the first section of this act, the judge of the supreme or circuit court shall, on the application of the executor, administrator, or guardian, or other person interested in said settlement, and on satisfactory proof of such neglect or refusal, on the part of the judge of the orphans' court, direct said commission in the same manner as on information of said judge.

§ 49. The county and orphans' court, respectively, shall have full power and authority to issue writs of attachment, or other writs necessary to enforce their orders, judgments, and decree.

§ 50. All the rules adopted by the judge of the tenth<sup>1</sup> judicial circuit, under the act organizing the courts of that circuit, with the concurrence of the judges of the supreme court for the government of the circuit court of Mobile county, shall be of equal force and validity, and be binding upon the county court of Mobile county.

ments, & executions may issue thereon

*Ib. Sec. 2.* On decree of distribution, each distributee may have execution for his share.

1832—(39)

*Sec. 1.* County courts to assess amt of distribution.

*Ib. Sec. 2.* Remedy against ex'rs, adm'rs, & guardians.

1833—(27)

*Sec. 1.* Judges of supreme or circuit courts may issue commissions for settlement of estates, when judge of county court is interested.

*Ib. Sec. 2.* Settlements to be recorded.

*Ib. Sec. 3.* Where judge of county court refuses to give notice

1830—(11)

*Sec. 3.* County court may enforce its decree by attachment.

1841—(21)

*Sec. 1.* Rules of practice in county court of Mobile.

<sup>1</sup> See "Judiciary—Circuit Court,"—§ 21.



## JUDICIAL PROCEEDINGS.—ERRORS AND APPEALS.

1807—(19)  
Sec. 39.  
Duty of the  
clerk on ap-  
peals & writs  
of error.

Penalty for  
neglect.

Appeal not to  
be dismissed  
for mere in-  
formality in  
transcript.

*Ib.* Sec. 40.  
Clerk of su-  
perior court  
shall receipt  
for record,  
and place the  
cause on the  
docket.

Penalty for  
refusal or  
neglect.

*Ib.* Sec. 41.  
Execution  
may be stay-  
ed in certain  
cases, in or-  
der to obtain  
writ of error.

§ 1. WHEN any appeal shall be granted by any court, or any writ of error be directed to the same, the clerk of such court shall immediately make up a full and perfect record of all the proceedings in such cause, and shall, on the application of either of the parties, give an attested copy of such record, with a taxation of all costs which have accrued, to the appellant or plaintiff in error, if required; and shall endorse on such copy the day or days on which the same may have been demanded, and the day on which it shall be delivered, and sign his name as clerk thereto: and if by reason of the delay of any clerk, any transcript shall not be filed in time, or the record is so erroneously or incorrectly made up, that the superior or supreme court cannot proceed thereon; such clerk shall, in either of the said cases, upon trial and conviction, be adjudged guilty of a misbehavior in office, and shall forfeit and pay to the person entitled to such attested copy, the sum of two hundred dollars, to be recovered by action of debt, in any court having cognizance thereof, and shall be further liable to an action on the case, for all damages which such person may sustain for want of such copy: *Provided, always,* That if the judge or judges of the superior or supreme court, should be of opinion that there appears to be sufficient matter of substance in the transcript of the record and proceedings, on any appeal or writ of error, to enable them to proceed thereon, the same shall not be dismissed for want of form; anything herein contained to the contrary notwithstanding.

§ 2. The clerk of any superior court, upon receiving a transcript of the record and proceedings in any suit, on which an appeal shall be made, or writ of error allowed, shall give a receipt to the person delivering the same, and shall immediately endorse thereon the day on which it shall be delivered; and if he receive it fifteen days before the commencement of the term of the next superior court of which he is clerk, he shall enter it upon the docket of causes for trial, and deliver to the parties such summonses for their witnesses as they may require:—But if such transcript be not delivered to such clerk before fifteen days previous to the next succeeding term, then the clerk shall enter the cause on the reference docket of such court.<sup>1</sup> And if the clerk of any superior court shall refuse, neglect, or omit to do any of the duties which he is hereby required to perform, such clerk shall, upon trial and conviction, be deemed guilty of a misbehavior in office, and shall forfeit and pay to the appellant or plaintiff in error two hundred dollars, to be recovered by action of debt, in any court having cognizance thereof, and be further liable to an action on the case, for all the damages which such appellant or plaintiff in error may sustain, by reason of such refusal, neglect, or omission.

§ 3. When in any county or circuit court, judgment upon a verdict in a civil action shall be entered, execution may, on the motion of either party, at the discretion of the court, and on such conditions for the security of the adverse party as they may judge proper, be stayed thirty days from the time of entering judgment, to give time to the party making such motion, to apply for a writ of error.

<sup>1</sup> The provisions of this section, as to the return of writs of error, have been modified, or rather repealed by later acts. See hereafter, § 13. See also, "Judiciary—County Court,"—§ 4.



§ 4. The supreme court may ordain and establish all necessary rules, respecting the granting, issuing, returning, and hearing of writs of error.

§ 5. If, in the trial of any cause, either the plaintiff or defendant shall think himself aggrieved by the direction or decision of any judge, of any of the courts in this state, the party so considering himself aggrieved, may in person, or by his counsel, tender to the judge giving such direction or decision, a bill of exceptions to his opinion, stating the points wherein he is supposed to err; and the said judge shall be bound to sign and seal the same; and the said bill of exceptions so signed and sealed, shall be made and considered a part of the record in the cause; and in case the said judge shall refuse to sign and seal the said bill of exceptions, if the facts therein are truly stated, he shall be deemed guilty of a high misdemeanor in office: (1) "and in all cases in which the judge of any inferior court may fail or refuse to certify any exception taken on the trial of any cause, it shall be lawful for the supreme court to receive such evidence of the exception as may be satisfactory to it, and to try the said cause in the same manner as if the said exception had been certified by the judge who tried the said cause. (2)

§ 6. No judgment of the circuit court in this state shall be suspended, unless the party applying for the writ of error, shall execute in the clerk's office a bond, with sufficient security, (to the adverse party) to be approved by the clerk, (3) conditioned for prosecuting the writ of error to effect, and to pay and satisfy the judgment which shall be rendered in the said cause by the supreme court. "And the said clerk shall send an attested copy of the bond to the said supreme court, with the transcript of the record: "and in case of dismissal or discontinuance of the cause, the supreme court shall render judgment against the principal and security in the bond.

§ 7. If any clerk of the circuit or county court, upon issuing any writ of error, shall take security which shall be insufficient at the time of taking the same, he shall be liable to an action of trespass on the case, in favor of the party aggrieved: *Provided*, That nothing in this act contained shall be so construed as to subject any clerk to a recovery in the action aforesaid, for taking as security for any writ of error, any person who was generally reputed sufficient for the sum for which he became bound as security, at the time he was taken as security.

§ 8. Whenever a writ of error shall be filed in the clerk's office, of any of the circuit courts of this state, in any cause or matter finally determined in the said courts, and bond and security be given according to law, it shall operate as a *supersedeas*.

§ 9. Whenever a writ of error shall have issued from the clerk's office of any of the circuit courts of this state, it shall be the duty of the clerk of the court from which it shall have issued, to give the

*Id.* Sec. 42.

Supreme court may

establish

rules concern-

ing writs

of error.

1814—(4)

Sec. 6.

Bill of excep-

tions to deci-

sion of judge

to be allowed

and form

part of

record.

[a 1826—(39)

Sec. 3.]

Judge failing

to certify, su-

preme court

may receive

satisfactory

evidence of

the excep-

tion.

1820—(4)

Sec. 3.

Bond on

granting

writ of error.

[b 1814—(4)

Sec. 5.]

Condition.

[c 1814—(12)

Sec. 2.]

[d 1815—(12)

Sec. 3.]

Judgment

against secu-

rity on af-

firmance.

1822—(6)

Sec. 1.

[e 1833—(18)

Sec. 1.]

Clerk liable

for taking in-

sufficient se-

curity.

(1) To be valid, a bill of exceptions must be claimed before verdict, and sealed as well as certified by the judge. *Powers v. Wright*, *Min. Rep.* 66.—Exceptions not certified by the presiding judge, nor noted in writing at the trial, cannot be considered as on the record. *Tombeckbee Bank v. Malone & Co.*, 1 *Stewt. Rep.* 269.

(2) But the exceptions must be established by proof within the trial term, and on notice to the opposite party. *Perkins v. Harper*, 2 *Stewt. Rep.* 477.

(3) Judgment may be superseded by the bond, with security, of any one of several parties to a judgment; and one may sue out a writ of error in the name of all. *Webster v. Yancy et al.*, *Min. Rep.* 183.



issuance of writ of error. defendant in error, or to his attorney, on application, a certificate stating that a writ of error has issued.

1819—(6)  
Sec. 16.  
Appeals to  
lie from cir-  
cuit to su-  
preme court.

Appellant to  
file trans-  
cript of re-  
cord by third  
day of term,  
or cause  
dismissed.

Cause may  
be reinstat-  
ed.

*Id.* Sec. 20.  
Writs of er-  
ror to lie  
from circuit  
to supreme  
court.

*Id.* Sec. 21.  
Supreme  
court to pass  
such judg-  
ment as cir-  
cuit court  
should have  
passed, or re-  
mand cause.

1820—(4)  
Sec. 1.  
Writ of error  
and citation  
to be issued  
by clerk of  
circuit court.

Transcript of  
record and  
citation to be  
delivered to  
party apply-  
ing for writ.

[a] 1816—(10)  
Sec. 1.  
If not filed on  
or before  
third day of  
the term,  
cause to be

§ 10. Either party may appeal, from any final judgment or decree of any circuit court, during the term at which the judgment or decree was rendered, to the supreme court, upon entering into bond, with security to be approved of by the court, in double the amount of the debt or damages, in such his, or their suit, for prosecuting the same with effect, or performing the judgment, sentence, or decree which the supreme court shall pass or make thereon, in case the appellant shall have the cause decided against him; (1) and the appellant shall file a transcript of the record with the clerk of the supreme court, on or before the third day of the first term of said supreme court after the appeal was granted, and on failure thereof the appeal shall be dismissed with costs and damages, upon the appellee's producing a certificate from the clerk of the circuit court of the amount of the judgment or decree, and that bond had been executed according to the order of the court granting the appeal: *Provided*, That for good cause shown, the appeal may be reinstated any time during the term, upon payment of costs.

§ 11. Writs of error shall lie from the court of errors and appeals, to the respective circuit courts throughout the state; and it shall be the duty of the judges, or any one of them, on application, either in vacation or term time, to grant such writ of error,<sup>1</sup> and to take good and sufficient security from the party demanding the same,—that the said party shall prosecute his writ to effect, and answer all damages and costs, if he fails to make his plea good.

§ 12. When any judgment, decision, or decree of the circuit court shall be reversed or affirmed in the court of errors and appeals, it shall be the duty of said court, to pass such judgment, decision, or decree as the circuit court should have passed, except where the damages to be assessed, or matter to be decreed, are uncertain; in which case the said court shall remand the same for final hearing.

§ 13. It shall be the duty of the clerks of the circuit courts in this state, respectively, on the application of the party against whom any final judgment shall have been rendered, or on the application of the attorney of the said party, to issue a writ of error returnable to the first day of the next term of the supreme court; and also, to issue a citation which shall be served upon the opposite party or his attorney, by the proper officer of the court, at least ten days previous to the commencement of the next term of the supreme court; which citation shall be returned to the office of the clerk from which it issued, whenever served, whether in vacation or term time, and shall, together with a transcript of the record in the cause, be delivered to the party applying for the writ of error, or his, her, or their attorney, to be by him, her, or them, returned to the first day of the next term of the supreme court; and in case the transcript of the record in the cause below, and the assignment of errors<sup>a</sup> should not be delivered to the clerk of the supreme court, on or before the third day of the term to which the writ of error shall be returnable, it shall be lawful for the supreme court, at that term, or at any term thereafter,—on motion of the defendant in error or his attorney, and on

(1) If the penalty of the bond is blank (or variant from the statute) the appeal must be dismissed. *Henry v. Gamble, Min. Rep. 6.*—An appeal will not lie to the supreme court in a criminal case. *Humphrey v. The State, ib. 64.*

<sup>1</sup> Now required to be issued by the clerks,—See § 13.



producing a copy of the citation served upon the defendant, certified by the sheriff, or on producing a certificate from the clerk of the court from which the writ of error issued, showing the time at which it issued, and amount for which judgment was rendered, and at what term of the court below, —to affirm the judgment of the circuit court with costs of suit; <sup>[a 1818—(3) Sec. 2, & 1816—(10) Sec. 1.]</sup> unless the plaintiff in error, or some other person, shall make affidavit, that the transcript of the record could not be procured from the clerk of the court below: but the cause may be reinstated on the docket, at any time during the term to which the writ shall be made returnable, upon showing sufficient cause to the said supreme court. <sup>dismissed on motion. But may be reinstated.</sup>

§ 14. When a final judgment shall be rendered by the supreme court in any cause, it shall be the duty of the clerk of the supreme court, to certify the judgment of the said court to the clerk of the court from which the cause came; and it shall be the duty of the clerk of the court below, immediately on the receipt of the said certificate, to issue execution, if judgment be rendered for the plaintiff in the original cause, for all the money, together with all the costs of the suit in the court below, which by the judgment of the supreme court may be due from the defendant to the plaintiff, or to issue such an execution as may be directed by the supreme court; but if judgment be rendered for the defendant in the original cause, then against the plaintiff in the original cause, for all the said costs of suit, or such other execution as may be directed by the supreme court, returnable to the next term of the court below. <sup>1b. Sec. 2. Clerk of supreme court to certify judgment to clerk of inferior court. Clerk of inferior court shall issue execution.</sup>

§ 15. It shall be the duty of the supreme court, to decide all the causes which may be returned to the said court at the return term thereof, unless for good cause the same shall be continued; and in all cases decided in the supreme court, the successful party shall be entitled to the same fee which is now allowed in chancery causes in the circuit court. <sup>1b. Sec. 4. Supreme court to decide at return term. Tax fee.</sup>

§ 16. It shall not hereafter be lawful for any circuit court to refer to the supreme court any question of law, except such as may be novel and difficult, and arise in a criminal case. <sup>1b. Sec. 5. Novel questions in criminal cases only, to be referred.</sup>

§ 17. A writ of error may issue, to reverse any final judgment in the circuit court, at any time within three years after the rendition of the judgment, and not afterward. <sup>1b. Sec. 7. Writ of error within three years.</sup>

§ 18. It shall be lawful for any judge of the supreme court, who shall not have given an opinion in the case below, to sit in the trial of the said cause in the supreme court. <sup>1b. Sec. 10. What judges may sit in supreme court.</sup>

§ 19. In case the supreme court of errors and appeals shall affirm entirely any judgment or decree brought before them, the plaintiff in error, if he be the defendant below, shall pay to the defendant in error, ten per centum damages on the amount due, <sup>1814—(4) Sec. 5. Damages, interest, and costs, on affirmation.</sup> with lawful interest from the time of rendering the original judgment or decree, besides the costs of the original suit and writ of error. <sup>[1811—(13) Sec. 1.]</sup>

§ 20. Whenever the judgment of a circuit court shall, on appeal or writ of error to the supreme court, be affirmed, ten per cent. damages shall be allowed, and not more: *Provided*, That no damages shall be allowed in any cause in the supreme court, unless the judgment of the court below shall have been suspended. (1) <sup>1820—(4) Sec. 11. Damages 10 per cent., but not to be allowed unless judgment was suspended.</sup>

§ 21. In causes wherein the judgments have been affirmed or de-

(1) Ten per cent. damages allowed under this act on affirmance of judgment, whether the suit was founded on a liquidated or an unliquidated demand. *Heart v. Judson, Min. Rep.* 135.



1822—(16)  
 Sec. 1.  
 Clerk of su-  
 preme court  
 may issue ex-  
 ecution for  
 costs not  
 collected.  
 Ib. Sec. 2.  
 May give  
 judgment  
 and award  
 execution for  
 costs.  
 Sheriff to  
 levy, and  
 make return.

Ib. Sec. 3.  
 Sheriff, &c.  
 not returning  
 execution,  
 may be mo-  
 ved against,  
 by the clerk.

Ib. Sec. 4.  
 Liable to  
 motion of  
 party  
 aggrieved.

Costs col-  
 lected, may  
 be sent by  
 mail, & post-  
 master's cer-  
 tificate of de-  
 posit, a bar  
 to motion.

1827—(34)  
 Sec. 1.  
 On execu-  
 tion returned  
 "no prop-  
 erty found,"  
 clerk may is-  
 sue execu-  
 tion against  
 plaintiff for  
 costs occa-  
 sioned by  
 him.

1826—(39)  
 Sec. 1.  
 Judgment in  
 supreme  
 court to be  
 entered a-

reversed by the supreme court, and in which the costs incurred in that court have not been collected, the clerk of the said supreme court may issue the proper writs of execution, in the names of the successful parties, against the parties respectively subjected to the payment of such costs, returnable to the succeeding term thereof.

§ 22. When judgment of an inferior court in any cause shall be affirmed or reversed by the supreme court, the said supreme court may give judgment and award execution against the unsuccessful party for the costs of such cause, incurred in the said supreme court; and it shall be the duty of the sheriff or other officer to whom such writ of execution shall be directed, to levy or execute, and make return thereof to the said supreme court, on or before the first day of the return term therein named, and render to the said clerk the moneys collected by him, according to the exigency of such writ.

§ 23. If such sheriff or officer fail so to return such writ of execution, or to pay the moneys by him made as aforesaid, the clerk of the supreme court may, in the name of the successful party in the cause, upon giving to such sheriff or officer, or to such sheriff and his securities, ten days' previous notice, and upon proof of such notice, move for (at the next term of the circuit court of the county in which such sheriff or officer resides,) and obtain judgment and execution against such sheriff or officer, or such sheriff and his securities so notified, for the amount of the writ of execution not returned as aforesaid, or the deficit of the moneys made and not rendered.

§ 24. If any sheriff or coroner in this state shall fail or refuse to return any execution, issued from the supreme court as aforesaid, and placed in his hands, to the return term of said court named in said execution, it shall be lawful for the party, at whose instance said execution issued from the supreme court, to obtain judgment against said sheriff or coroner for the amount of money named in said execution, and costs of the motion: *Provided, always,* That the certificate of the postmaster, living at the seat of justice of the county of which he is sheriff or coroner, or the nearest one thereto, that said sheriff or coroner has placed in his office, sealed up in his presence, and directed to the clerk of the supreme court, any execution, and the amount of money collected thereon, which has been placed in his hands, shall be sufficient evidence on the part of said sheriff or coroner, to prevent judgment from being obtained against him and his securities as aforesaid.

§ 25. The clerk of the supreme court is hereby authorized, whenever any sheriff or coroner shall return on an execution, directed to them or either of them, that the defendant or defendants in said execution, or either of them, have no property in his county out of which he can make the amount of costs due on said execution, forthwith to issue execution against the plaintiff or plaintiffs in said execution, for all costs due on said execution, created by the plaintiff or plaintiffs in obtaining his judgment and execution; and no costs, created by any defendant or defendants on the part of him or them, shall be taxed or collected in said execution: *Provided,* That an execution which may be returned "no property found," shall have issued to the county from which the case was brought into said court, before an execution under this act shall issue against the plaintiff or plaintiffs.

§ 26. In all cases in which the judgment, sentence, or decree of any inferior court, shall be affirmed in the supreme court, it shall be the duty of said supreme court, to render judgment, against the security or securities in the bond executed on obtaining the appeal or



writ of error, in the same manner and for the same sum for which judgment shall be rendered against the plaintiff or plaintiffs, complainant or complainants, in said supreme court; and it shall be the duty of the clerk of said supreme court, to certify the judgment thereof to the court from which the cause came, against both the principal and the surety or sureties; and it shall be the duty of the clerk of the court, whose judgment or decree shall have been affirmed, immediately on the reception of the certificate, to issue execution, returnable to the next term of the said court, against the person or persons against whom judgment shall have been rendered in the supreme court, and for the amount of said judgment, in pursuance of the certificate from the clerk of the supreme court.

§ 27. The same power and authority, that is now vested in the supreme court, to render judgment final against the security in bonds, for the prosecution of appeals or writs of error to said court, is hereby vested in the circuit courts of this state, upon all bonds for the prosecution of appeals or writs of error from the county courts, to the said circuit courts.

§ 28. The same per centage shall be assessed upon appeals and writs of error taken from the county to the circuit court, as is now assessed in the supreme court, upon appeals or writs of error taken from the several county or circuit courts to the supreme court.<sup>a</sup>

§ 29. Whenever any party or parties litigant may desire to take an appeal, or sue out a writ of error to any cause, to which a non-resident or non-residents may be a party, a notice to the attorneys of record, in the county or circuit court, (as the case may be,) or to the agent of such non-resident or non-residents, shall be deemed and taken as sufficient notice to the supreme court, to hear and determine such cause.

§ 30. Whenever any suitor may be desirous of taking an appeal, or suing out a writ of error, in any cause to which a non-resident or non-residents may be a party, and who have no known agent within the county, where such cause shall have been tried; or where the attorney of record shall be beyond the limits of the state of Alabama, or shall be dead; then, and in that case, the party desiring such appeal, or writ of error, may, upon making affidavit of such facts, (which affidavit shall be filed in the clerk's office, of the court from which such appeal or writ of error shall be taken, and a copy forwarded to the supreme court, with a transcript of the record,) be entitled to the benefit of an appeal or writ of error, (as the case may be,) without notice: *Provided, however,* That the supreme court may order such notice to be given, by public advertisement or otherwise, as it shall deem meet, and such case may, at such court's discretion, be continued for that purpose.

§ 31. It shall be lawful for the clerk of the supreme court, in the name of the successful party, to commence and prosecute any motion against any sheriff or coroner, or his security or securities, in the circuit court of the county for which he is such sheriff or coroner, for failing to return any execution from the supreme court, or to make the money on any execution from said supreme court, where there is sufficient property, or failing to return any execution from said court, or making a false return thereon, or failing to pay over money made on any execution, on demand made, under the same rules and regulations as now govern motions against such officers, and their securities, for said respective causes, where executions issue from the circuit courts.

§ 32. On the trial of any such motion, where the execution has

against security, and certified to clerk of inferior court, who shall issue execution agreeably to the certificate.

1830—(2)  
Sec. 1.  
Circuit courts may enter judgment final against securities, on appeals from county courts.

1830—(22)  
Sec. 1.  
Damages on appeals.  
a See § 20.

1836—(17)  
Sec. 1.  
Notice to attorney, &c. of non-resident de't in error, sufficient.

ib. Sec. 2.  
If no known attorney, &c. in the state, appeal, &c. may be taken without notice.

But supreme court may order notice.

1840—(20)  
Sec. 1.  
Clerk of supreme court may move, in name of successful party vs. sheriff, &c. for failing to make money, &c.

ib. Sec. 2.  
What sufficient.



ent evidence  
on trial of  
such motion.

not been returned by the sheriff or coroner, and received by the clerk of the supreme court, the certificate of said clerk, under the seal of the court, stating when the execution issued, its amount, who against, who in favor of, when returnable, and that the same was put in the post-office, stating the time when directed to said sheriff or coroner, and that the postage on said package was paid, shall be sufficient evidence of the contents of said executions, and that the same has been received by said officer, and sufficient to dispense with the production of said execution, or any other part of the record of said supreme court, on the trial of said motion; unless said officer shall deny, by affidavit sworn to, that said execution ever came to his hands, or that it was returned to the proper office by due course of mail, or that the money could not be made on the execution, as the case may be.

*Ib. Sec. 3.*  
Where execution has been returned, certified copy, &c., sufficient.

§ 33. Where execution has been returned, a certified copy thereof and of the endorsements thereon, under the hand and seal of office of said clerk, shall be sufficient evidence on any such motion, of the issuance and return of any such execution, and of the contents of said execution, and return thereon.

*Ib. Sec. 4.*  
Unnecessary to produce judgment of S. court.

§ 34. On the trial of any motion under this act, it shall not be necessary to produce the judgment of the supreme court, or any copy thereof.

*Ib. Sec. 5.*  
Sheriff's fee for collecting execution from supreme court. Pl'ff not liable for costs.

§ 35. The sheriffs and coroners, collecting executions from the supreme court, shall be entitled to a fee of one dollar, out of the person against whom the same issued, for his services in collecting the same: *Provided*, That the plaintiff in execution shall, in no case, be liable for the costs of the motion when unsuccessful, but in that event they shall be paid by the clerk.

1836—(16)  
Sec. 1.

Consultation room for supreme court judges.

§ 36. The room on the basement floor of the state capitol, adjoining the treasurer's office, is hereby appropriated as a consultation room, for the use of the judges of the supreme court.

1836—(18)  
Sec. 1.

Governor's duty, when judges of supreme court are incompetent.

§ 37. In all causes, now pending, or which shall hereafter be pending, in the supreme court, and for deciding which the judges of the said court shall be disqualified by interest or any other cause, they shall certify the same to the governor, who shall, thereupon, direct a commission to any three judges of the circuit court to hear and determine the said cause or causes: and it shall be the duty of the said circuit judges to hear and determine such cause, or causes, and their judgment or decree shall be entered of record by the clerk of the supreme court, in the same manner as other judgments and decrees of the supreme court are entered.

*Ib. Sec. 2.*  
Proceedings, when two of them are incompetent.

§ 38. In any cause, now pending, or which shall hereafter be pending in said court, in which two of the judges of the said court shall be disqualified as aforesaid, it shall be the duty of the other judge to hear and determine the said cause pending: *Provided, always*, That if the said judge shall be of opinion, that the judgment in said cause should be reversed, he shall certify the same to the governor, who shall associate with him two of the judges of the circuit court for the decision of said cause; and it shall be the duty of the said judges of the circuit court, and such judge of the supreme court, to rehear the said cause, and render a judgment, or decree thereon, and such further proceedings shall be had thereon as are provided for by the first section of this act.

1843—(29)  
Sec. 1.

Writs of error, varying from original record, may be amended.

§ 39. All writs of error, wherein there shall be any variance from the original record, either in the name or the number of the parties, the form of the action, or other defect, may and shall be amended, and made agreeable to such record, by the respective courts, where



such writ or writs of error shall be made returnable, under such rules and regulations as the supreme court may prescribe.

NOTE.—For other provisions on the subject of Errors,—See next title, “Errors and Amendments.”

## JUDICIAL PROCEEDINGS AT COMMON LAW.

This title comprehends the following subdivisions, arranged alphabetically, viz :

- |                                        |                                        |
|----------------------------------------|----------------------------------------|
| 1. Abatement of Suits.                 | 12. Motions against Officers of Court. |
| 2. Appeals from Justices of the Peace. | 13. Penal Bonds.                       |
| 3. Costs.                              | 14. Penalties.                         |
| 4. Detinue.                            | 15. Petition and Summons.              |
| 5. Docketing and Order of Causes.      | 16. Pleading.                          |
| 6. Ejectment.                          | 17. Process.                           |
| 7. Errors and Amendments.              | 18. Real and Possessory Actions.       |
| 8. Joint Obligors and Partners.        | 19. Scire Facias and Notice.           |
| 9. Judgment and Inquiry of Damages.    | 20. Set-off and Tender.                |
| 10. Jurisdiction.                      | 21. Suits against the State.           |
| 11. Limitation of Actions.             | 22. Trial and Evidence.                |
|                                        | 23. Venue.                             |

## 1. ABATEMENT OF SUITS.

§ 1. When any suit shall be depending in any court in this state, and either of the parties shall die before final judgment, the executor or administrator of such deceased, who was plaintiff, petitioner, or defendant, shall have full power, (in case the cause of action by law survive) to prosecute or defend such action until final judgment : and the defendant is hereby obliged to answer thereto accordingly. And the court before whom such cause may be depending, is hereby empowered and directed to hear and determine the same, and to render judgment for or against such executor or administrator, as the case may require : and if such executor or administrator, having been duly served with a *scire facias*, or citation, from the office of the clerk of the court, where such suit is depending, fifteen days before the meeting thereof, shall neglect or refuse to become a party to the suit, the court may render judgment against the estate of the deceased party, in the same manner as if the executor or administrator had voluntarily made himself a party to the suit ; and the executor or administrator, who shall become a party as aforesaid, shall, upon motion to the court where the suit is depending, be entitled to a continuation of the same until the next term, or time of holding the court.

1803—(2)

When cause of action survives, suit not to abate by death of either party ; but to inure to representative.

Executor of def't failing to become a party when cited, judgment against the estate.

Executor entitled to one continuance.

1811—(11)

Sec. 19.

Action of trover to survive for and against ex'rs & adm'rs.

1812—(8)

Sec. 4.

Suits for use, not abated by

§ 2. The action of trover shall survive for and against executors and administrators.

§ 3. Where any person or persons shall institute any suit in the name of any other person or persons, for his or their own use and benefit, the death of such person or persons, in whose name or names the suit or suits are instituted, shall not abate such suit : but the same shall progress and be tried in the same manner as though



death of nominal pl'ff.

1824—(2)  
Sec. 1.  
On death of joint def't, or pl'ff, suit may be continued by survivors.

1826—(16)  
Sec. 1.  
Ex'r or adm'r may revive proceedings on writ of *ad quod damnum*  
Ib. Sec. 2.  
or action of trespass for injury to property.

1827—(23)  
Sec. 1.  
Suit of *feme sole* not abated by her marriage.  
Ib. Sec. 2.  
Sci. fa. to husband of *feme sole* defendant.

such suit was actually brought in the name of the person or persons, for whose use the same was instituted.

§ 4. Where there are two or more plaintiffs or defendants to any suit or suits, in any court in this state, and one or more of them die; if the cause of such action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the writ or action shall not be thereby abated; but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs, against the surviving defendant or defendants.

§ 5. Where any person, who may sue out a writ of *ad quod damnum*, may die before the termination of the proceedings on such writ, his or her executor or administrator may, on motion, revive the proceedings, and prosecute the same to a final termination.

§ 6. All actions of trespass *quare clausum fregit*, and actions of trespass to recover damages for injuries to personal property, may, if the plaintiff or plaintiffs die, be revived by his, her, or their representatives, in the same manner as actions on contracts.

§ 7. No suit instituted by a *feme sole* shall abate by her intermarriage: *Provided*, The person marrying such *feme sole* will make himself a party to such suit, which may be done by motion to the court.

§ 8. It may be lawful, when a *feme sole* defendant shall have intermarried, for the plaintiff to sue out a *scire facias* to her husband, and make him a party; and such suit shall not abate by reason of the marriage.

## 2. APPEALS FROM JUSTICES OF THE PEACE.

1814—(7)  
Sec. 2.  
Appeal within 5 days after judgment  
[a 1823—(11)  
Sec. 5.]  
Appellant to give bond.  
Justice to summon witnesses.  
Interest and costs on affirmation of judgment.

§ 9. Any person, aggrieved by the judgment of any justice of the peace, may, within five days thereafter, appeal to the next circuit or county<sup>a</sup> court sitting for his county, first giving to such justice, bond, with good security, in double the amount of such judgment, conditioned to prosecute such appeal with effect; and in case he be cast therein, to pay and satisfy the condemnation of the court.(1) And the justice, before whom the cause was originally tried, shall issue subpoenas for all witnesses that the parties in such appeals may require. And in case the appellate court affirms the judgment of the justice below, execution with interest and costs shall issue as in other cases.

1814—(17)  
Sec. 3.  
Sum not over \$20, tried without jury.  
Over \$20, tried *de novo*.

§ 10. In all cases, where the sum claimed, does not exceed twenty dollars, the trial shall be by the court, without the intervention of a jury; and in cases where the sum claimed exceeds twenty dollars, the court shall try such appeal *de novo*, as any other cause is tried, at the first term, on an issue(2) to be made up at or before the

(1) The appeal bond is sufficient evidence that judgment was rendered. *McAlpin & Read v. Pool*, *Min. Rep.* 316. After the term to which an appeal is returned, if the appellee has been notified or has appeared, it cannot be dismissed for the insufficiency of the appeal bond, unless a motion to dismiss is made at the return term and continued; and the court before dismissal should allow a good and sufficient bond to be given in open court, if the first was informally or inartificially taken by the justice without the neglect or default of the appellant. *Jenkins v. Cauley*, 1 *Stewt. Rep.* 61. *Payne v. Martin*, *ib.* 407. But if no bond be filed, a dismissal may be claimed at any time. *Payne v. Martin*, *ib.* 407.

(2) But if the defendant will not plead, and the instrument ascertains the amount due, judgment may be entered by default as in other cases. *Bevin v. Goodman*, *Min. Rep.* 90.



trial; and it shall be the duty of the justice of the peace trying such cause, to send up to the clerk, a statement of the case, with all the papers and the bond thereunto belonging, before the sitting of said court.

§ 11. Whenever any judgment, rendered by any justice, shall be removed into any court by appeal, *certiorari*, or otherwise, and the judgment of the justice be affirmed, judgment shall be entered against the security as well as the principal, and execution may issue against both, or either of them.

§ 12. In cases of appeals from judgments of justices of the peace, the court, before whom such appeal shall be brought, shall proceed to try the same according to the justice and equity of the case, without regarding any defect in the warrant, *capias*, summons, or other proceedings of the justice of the peace, before whom the same was tried. (1)

§ 13. In all appeals taken, by virtue of this act, from a justice of the peace, when it shall be made to appear to the court, that the appeal was taken merely for delay, the court shall award fifteen per cent. damages. (2)

§ 14. Any cause, removed by writ of *certiorari*, shall stand for trial at the first term of the court to which the same is returnable.

§ 15. The clerk of the court, after issuing any writ of *certiorari*, is authorized and required, at the request of either of the parties, to issue subpoenas for witnesses, returnable to the same term to which the writ of *certiorari* is returnable.

§ 16. Whenever the defendant, in any cause that shall have been decided by a justice of the peace, shall appeal from the judgment of such justice, and the appellate court shall render judgment in favor of the plaintiff, for a less sum than that recovered before such justice; such appellate court may enter judgment for the costs of such appeal, either against the plaintiff or the defendant, according to the justice of the case: "but where the plaintiff or successful party shall appeal, and shall not recover more than was adjudged by the justice of the peace, in that case he shall pay all the costs."

§ 17. No appeal shall be tried, unless it appear to the court that the appellee, his agent, or attorney, shall have had five days' notice of such appeal, previous to the term at which the same shall be tried, or unless the return of *non est inventus* be made by the constable on the notice issued by the justice; and for want of such notice or return, the cause shall stand for trial at the ensuing term.

§ 18. On all appeals taken, the justice shall issue a notice to the appellee of the same, which shall be served and returned by the constable, and sent up with the papers.

§ 19. In cases of appeals and writs of *certiorari* from judgments of justices of the peace, taken to the circuit or county courts, and in cases of appeal and writ of error, from the county court to the circuit court, when the judgment of the appellate court is final, such appellate court shall give judgment and award execution, as well for the costs of the inferior as of the appellate court.

(1) What defects in the proceedings of justices have been held to be cured by this statute, see *Perry v. Brown*, *Min. Rep.* 55. *M'Grew v. Adams & Elliott*, 2 *Stewt. Rep.* 502. It does not cure a misjoinder of parties. *Smith & Hill v. Cobb*, 1 *Stewt. Rep.* 62. On appeal, objection cannot be made to the return of the warrant, unless it has been made before the justice, and the court should permit the constable to amend his return. *Needham v. Newson*, *Min. Rep.* 407.

(2) Damages not allowed on *certiorari* from justices' judgments. *Hudnall & McCabe, v. McCarta*, *Min. Rep.* 402.



## 3. COSTS.

1807—(19)  
Sec. 35.  
Party pre-  
vailing enti-  
tled to costs.

§ 20. In all cases, in civil actions, the party in whose favor judgment shall be given, or in case of nonsuit, dismissal, or discontinuance, the defendant, shall be entitled to full costs, except when it is or may be otherwise directed by law.

1822—(1)  
Sec. 1.  
In certain  
cases plain-  
tiff to recover  
no more  
costs than  
damages.  
1824—(16)  
Sec. 1.  
Plaintiff for  
whose use  
suit is  
brought, lia-  
ble for costs.

§ 21. In all suits brought to recover damages for slander or trespass, assault and battery, the plaintiff shall not recover more costs than damages, if the damages do not exceed five dollars; unless the judge before whom the suit was tried, shall certify that more damages ought to have been awarded by the jury. (1)

1826—(24)  
Sec. 1.  
Party suc-  
ceeding lia-  
ble for his  
own costs, in  
case of other  
party's inab-  
ility to pay,  
and execu-  
tion may is-  
sue against  
him.

§ 22. On all suits instituted in any court of record in this state, in the name of one or more persons for the use of another, and judgment thereon rendered against the plaintiff or plaintiffs for costs, it shall be lawful to enter up judgment and issue execution against the person or persons for whose use such suit or suits may be instituted.

1831—(10)  
Sec. 1.  
No county  
tax allowed  
on bank  
judgments,  
without a  
jury.  
1839—(22)  
Sec. 1.  
In actions for  
torts, if dam-  
ages do not  
exceed \$5, no  
more costs.

§ 23. The clerks of the several circuit and county courts, and the justices of the peace in the several counties in this state, are hereby authorized, whenever any sheriff, coroner, or constable shall return on an execution, directed to them or either of them, that the defendant in said execution has no property in his county, out of which he can make the amount of costs due on said execution, forthwith to issue execution against the plaintiff in said execution, for all costs due on said execution, created by the plaintiff in obtaining his judgment and execution; and no costs created by any defendant on the part of the defendant, shall be taxed or collected in said execution. (2)

§ 24. Hereafter, no county tax on judgments rendered in favor of the Bank of the State of Alabama, without the intervention of a jury, either by the circuit or county court of Tuskaloosa county, shall be taxed in the bill of costs in said causes.

§ 25. In all actions to recover damages for torts, the plaintiff shall recover no more costs than damages, where such damages do not exceed five dollars, unless the presiding judge shall certify that greater damages should in justice have been awarded

## SECURITY FOR COSTS.

1807—(14)  
Sec. 9.  
Suits of non-  
residents to  
be dismissed,  
if security be  
not given for  
costs.

§ 26. Every action at common law, or suit in chancery, commenced in the name of any person residing out of this state, shall be dismissed, if security be not given with the clerk of the court from whence the process shall issue, or wherein it shall be depending, within sixty days after notice shall, at any time during such non-residence, have been given to the plaintiff or his attorney, by some person interested, that such is required for the payment of the costs which may be awarded to the defendant, and also of the fees that

(1) It does not vary the case, though the jury find costs for the plaintiff. *Reid v. Gordon*, 2 *Stewt. Rep.* 469. This statute does not extend to cases of trespass to try titles. *McGehee v. Evans*, 1 *Stewt. Rep.* 589.

(2) The costs, chargeable against the successful party, include all except the appearance of the opposite party, and such acts as are done at his instance. *Anon.*—2 *Stewt. Rep.* 228.



are or may become due to the officers of the court; (1) and after security shall be so given, and the fees not paid at the time the same become due, it shall be lawful for the court in which the cause was commenced, to enter up judgment on motion against such security, and award execution accordingly.

§ 27. When any process shall issue from any of the courts of this state, by the direction of any attorney, for any person or persons residing out of this state, against any person or persons residing within the same, the person or persons suing for such process, or prosecuting such suit, at the return of such process, or at any time thereafter when required, shall, upon motion, be ruled to give sufficient security for all costs, accruing in such action or suit; and if such attorney shall fail to give such security, being thereto required, the suit shall be dismissed, and execution may issue against such attorney for all such costs.

§ 28. If any person resident in this state, shall institute any suit, whether at common law or in chancery, in any of the courts of this state, and shall after the institution thereof remove out of this state, such person shall be bound to give security for the costs of such suit, in the same manner and under the same restrictions pointed out for non-resident plaintiffs.

§ 29. Any clerk may require security for costs of non-residents, before he issues any writ.

§ 30. On all bonds hereafter made by non-resident plaintiffs, for the prosecution of suits in the county or circuit courts, and to secure the costs of such suits, it shall be lawful for such courts, at the time of rendering final judgment in the cause, to render judgment against the security of such non-residents for the costs adjudged.

NOTE.—The plaintiff, on suing out a bail-writ, is required to give security for costs. See "Bail in Civil Cases,"—§ 9.

#### 4. DETINUE.

§ 31. In any action of detinue, if the plaintiff, his agent or attorney shall make affidavit that the property sued for belongs to the plaintiff, and shall give bond with sufficient security, to be approved of by the clerk of the court issuing the writ, conditioned that if the plaintiff shall fail in the suit, he shall pay the defendant all costs and damages he may sustain by the wrongful suing out of the writ, it shall be the duty of the clerk of the court issuing the writ by endorsement on the same, to require the sheriff or other officer serving it, to take the property sued for into his possession, unless the defendant shall give bond with sufficient security in double the amount of the value of the property to be taken, payable to the plaintiff, and conditioned that the defendant, if cast in the suit, shall, within thirty days after its determination, deliver to the plaintiff the property recovered by such suit.

§ 32. If the defendant in such suit shall neglect for five days, to give the bond required by the first section of this act, the property taken shall be delivered to the plaintiff, on his giving bond and suffi-

(1) Held not to include non-resident parties to suits in the supreme court. *Harris & Farrow v. Clapp*, *Min. Rep.* 328. Security for costs may be required as well in appeals from justices, as in other cases. *Thompson v. Miller*, 2 *Stert. Rep.* 470.



property delivered to plaintiff, on his giving bond. If plaintiff failing, defendant to have property.

*Ib. Sec. 3.*  
On recovery, and failure to deliver property, defendant's bond shall be returned, "forfeited," and execution issue against him and securities.

*Ib. Sec. 4.*  
If plaintiff failing in his suit, and not delivering up property, liable with his securities, to action and damages.

cient security, in double the amount of the value of the property, payable to the defendant, conditioned to deliver the property to the defendant within five days after demand made, in case he shall fail to recover the same in his said suit; and if the plaintiff shall neglect to give such bond within five days after the time allowed the defendant, it shall be the duty of the officer serving the writ to return the property taken, to the defendant.

§ 33. When the defendant shall have given such bond, and a recovery shall be had against him, and he shall neglect to deliver to the plaintiff the property recovered, as provided for by the first section of this act, it shall be the duty of the sheriff, at the plaintiff's request, to make a demand of the property recovered, of the defendant or his security; and if it shall not be delivered within five days after such demand, the sheriff shall return the bond taken in the suit, to the office of the clerk of the court where the recovery shall be had, as "forfeited;" and such bond, so returned, shall have the force and effect of a judgment, and execution thereon shall issue against principal and security for the alternative judgment.

§ 34. If the plaintiff shall fail in such action, and shall neglect to deliver the property taken, after demand made, as provided for by the second section of this act, he, and his securities, shall be liable to an action on such bond, and in case of recovery thereon, damages, not exceeding fifty per centum on the value of the property, shall be given for the detention thereof.

## 5. DOCKETING AND ORDER OF CAUSES.

1811—(11)  
*Sec. 2.*  
Clerk to keep separate docket for issues, &c.

To keep sub-pœna docket, and issue sub-pœnas.

1815—(12)  
*Sec. 1.*  
Clerk to assign causes to particular days. Causes not tried out of their order.

1819—(6)  
*Sec. 7.*  
Order of proceedings. Arrest of judgment, error, &c.

1807—(19)  
*Sec. 39.*  
Death or

§ 35. Before any circuit or county court, the clerks of said courts shall enter in a particular docket, all such causes, (and those only) in which an issue is to be tried, or inquiry of damages to be made, or a special verdict, or case agreed, or demurrer, or other matter of law is to be argued, in the same order as they stand in the course of proceeding, setting, as near as may be, an equal number of causes to each day, and no cause shall be taken up for trial or hearing, at a day previous to that at which it may be set; and the clerk shall issue sub-pœnas for witnesses to attend on the days on which the causes stand for trial; and it shall be the duty of the clerk to keep a regular sub-pœna docket, and to issue sub-pœnas before every term of the court, for all the witnesses, in every cause, that either party may at any time have directed to be summoned.

§ 36. It shall be the duty of the clerks of the circuit courts in this state to keep a trial docket, and to assign not less than fifteen causes ready for trial each day of the term, commencing on the first day, and continuing until the docket be gone through. And it shall not be lawful to take up any cause out of the order in which it shall stand upon the trial docket, unless by consent of parties.

§ 37. All jury causes shall be first tried; all motions in arrest of judgment shall be argued within the three last days of the term, in which the issue shall be tried; the defendant's attorney first serving the plaintiff's attorney with a copy of the reasons in arrest of judgment, the day immediately following that on which such motion shall be made: arguments on writs of error, special verdicts, cases agreed, petitions for legacies, and distributions of intestate estates, shall be heard during the four last days of the term.

§ 38. No proceedings in any court shall be discontinued by the death of any of the judges or justices thereof, or by their non-attend-



ance at any term; but in such cases, all actions and suits, matters absence of judge.  
and things depending therein, shall stand continued, of course, to the  
next succeeding term. (1)

§ 39. The presiding judge of the circuit court of Mobile shall, at Jan. 5, 1833.  
every term of said court, try causes in the following order, to wit: Sec. 1.  
appeals from justices of the peace; appeals from the county court; Order of  
actions of assumpsit; actions of debt, covenant, and detinue, during causes in cir-  
the first week of the term. The state docket shall be taken up on cuit court of  
Monday of the second week, and disposed of, when the residue of Mobile.  
the actions of assumpsit, debt, covenant, and detinue, if any there be,  
shall be tried, dismissed, or continued, when land cases (so called)  
and all other cases, remaining on the common law docket, shall be  
called in their order and disposed of. Motions shall then be heard  
and determined, and the term shall close with the trial of all chancery  
business: *Provided*, That, by agreement and consent of the judge,  
any case may be tried out of its order.

§ 40. The several clerks of the circuit courts in this state, shall 1841—(22)  
make and keep a separate docket of all cases, civil or criminal, in Sec. 1.  
which witnesses may be summoned, and set the same, as nearly as Clerks of cir-  
practicable, for trial, on particular days of the term, commencing on cuit courts  
the second day thereof; and it shall be the duty of said clerks to to keep sepa-  
notify each witness, in the writ of subpoena, of the day on which the rate dockets  
cause is set for trial; and no witness shall be entitled to compensa- of all cases,  
tion for attendance, previous to the time appointed for trial, nor shall in which wit-  
it be lawful to try any cause thus set, previous to the day of such nesses may  
appointment: *Provided*, This section shall not apply, where the be summon-  
term of any court is limited to one week. ed, set the  
same for par-  
ticular days,  
&c. except  
when.

NOTE.—Motions against Banks, for refusing to pay their notes, &c. have pre-  
cedence of all other causes.—See “Banks,”—§ 2.

## 6. EJECTMENT.

§ 41. In all actions of ejectment, tried in any of the courts of this 1815—(7)  
state, if it shall be made to appear to the satisfaction of the jury try- Sec. 1.  
ing such cause, that the defendant has a crop then planted, or grow- When def't  
ing upon the premises in question, they shall, if they find the defend- has a crop  
ant guilty of the trespass and ejectment complained of, assess, at the growing on  
same time, such rent as shall be reasonable and just for the plaintiff the premises,  
to receive, for the use of said premises during such time as shall be, jury shall as-  
in their opinion, sufficient to enable the defendant to gather and se- sess rent un-  
cure his crop from off said premises: and no writ of *habere facias* til crop can  
*possessionem* shall issue upon any such verdict, until the expiration be gathered.  
of the time determined by the jury, if the defendant in such action Def't may  
shall enter into bond, at any time during the term of the court before retain pos-  
which such cause is tried, with sufficient security, to be approved of session until  
by said court, in the penalty of double the amount of the rent assess- crop is gath-  
ed, on giv-  
ing security  
for rent.  
ed by the jury, payable to the plaintiff, conditioned for the payment of the rent so assessed at the expiration of the time fixed by the jury, for the defendant to hold possession of the said premises.

§ 42. All bonds, taken in virtue of this act, shall be filed in the Tb. Sec. 2.  
clerk's office of the proper court, and shall have the force and effect Def't's bond  
to be filed

(1) A suit, not tried at trial term, is discontinued, unless continued by the court, or by operation of law. *Kennon v. Bell*, *Min. Rep.* 98.



with clerk,  
and if forfeited, execution to issue thereon.

of a judgment ; and if the same be not discharged according to the condition thereof, execution shall issue thereon against the principal and his security, for the sum therein mentioned, as upon other judgments in said court.

1821—(31)  
Sec. 1 & 4.  
Fictitious proceedings in ejectment, abolished, & titles to be tried by actions of trespass.

§ 43. The fictitious proceedings in the action of ejectment are hereby abolished ; and hereafter, the mode of trying the right and title to lands, tenements, or hereditaments, shall be by action of trespass, in which the plaintiff shall endorse on his writ and copy-writ, that the action is brought as well to try titles as to recover damages ; and it shall not be necessary to file the original note, bond, or paper sued on, with the clerk, but a copy thereof shall be sufficient.

*Ib.* Sec. 2.  
Law of ejectment applicable to trespass.

§ 44. The laws now in force in relation to the action of ejectment, except as far as relates to fictitious proceedings therein, shall be applied to the action of trespass, to try titles as aforesaid.

*Ib.* Sec. 3 & 4.  
Plaintiff recovering, to have execution for possession.  
1835—(15)  
Sec. 1.  
Party may have his election, to bring ejectment, or trespass to try title.

§ 45. If the plaintiff, in the aforesaid action of trespass, recover, he shall be entitled to an execution for possession, as well as for costs and damages. (1)

§ 46. In all cases where the action of trespass to try titles would, under the present laws, be the proper action, the plaintiff, at his election, shall have either said action of trespass to try title, or the action of ejectment ; and when the action of ejectment shall be brought, it shall be lawful, and shall be the duty of the jury trying the same, to assess the damages in favor of the real plaintiff, as in actions of trespass to try titles.

1836—(19)  
Sec. 1.  
Defendant to suggest to court his adverse possession of three years.

§ 47. In any suit which shall be commenced in any of the courts of this state for the possession of lands or tenements, it shall be lawful for the defendant, at any time before the trial of such suit, to suggest to the court, that he and those persons, whose estate he has in the lands or tenements sued for, have had adverse possession of the same for three years next before the commencement of such suit, and that he and those persons, whose estate he has, have made permanent and valuable improvements on the lands untenanted, sued for, during the time he or they have had adverse possession of the same. And the jury trying the suit, if they shall find for the plaintiff, shall at the same time inquire, if the suggestion so made be true or false ; if false, they shall return a verdict as in ordinary cases for the damages sustained ; but, if true, they shall assess the value of the improvements at the time of the trial, which have been made by the defendant, or by those whose estate he has : and shall assess the value of the land or tenements, which they shall return a verdict for, and shall also assess the value of the use and occupation of the same without considering the increased value thereof, by reason of such improvements as shall have been made by the said defendant, or by those whose estate he has. And if the value of the use and occupation, as assessed, shall exceed the value of the improvements, as assessed, the court shall render a judgment against the defendant for the excess.

Duty of jury trying.

*Ib.* Sec. 2.  
No writ of possession shall issue for land after judgment, &c.

§ 48. In any suit where the value of the improvements, so assessed, shall exceed the value of the use and occupation, no writ of possession shall be issued for the term of one year after the rendition of judgment, unless the plaintiff or his legal representatives shall pay

(1) Various points decided under this statute. *White v. Saint Guirons*,—*Min. Rep.* 331.



to the clerk of the court, for the defendant, the excess of the assessed value of the improvements, over the value of the use and occupation; and if the said plaintiff, or his legal representatives, shall neglect, for the term of one year, to pay the excess in value of the said improvements, and the said defendant, or his legal representatives, shall, within three calendar months after the expiration of the said year, pay to the clerk of the court, for the plaintiff, the value of the lands or tenements as assessed by the jury, then the plaintiff shall be forever barred of his writ of possession, and from ever having or maintaining any action whatever against the defendant, his heirs or assigns, for the lands or tenements recovered by such suit; and if the defendant or his legal representatives, shall not, within the said three months, avail him or themselves of the benefits of this act, the plaintiff, or his legal representatives, may sue out a writ of possession as in ordinary cases.

§ 49. In any suit for the recovery of lands or tenements, which shall be commenced against any tenant for years, at will or by sufferance, it shall be lawful for his or her landlord to enter him or herself a defendant to such suit, and such landlord shall be solely entitled to all the benefits and provisions of this act.

*Id. Sec. 3.*  
Landlord may enter himself def't to suit.

## 7. ERRORS AND AMENDMENTS.

§ 50. No summons, writ, declaration, return, process, judgment, or other proceedings, in any of the courts of this state, shall be abated, arrested, quashed, or reversed, for any defect or want of form; but the said courts, respectively, shall proceed and give judgment, according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects, or want of form, in such writ, declaration, or other pleading, return, process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially set down and express, together with his demurrer, as the cause thereof; and the said courts, respectively, shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects, and want of form, (other than those which the party demurring shall express as aforesaid,) or any mistake in the Christian name or surname of either party, sum of money, quantity of merchandise, day, month, or year, in the declaration or pleading, the name, sum, or quantity, or time, being right in any part of the record or proceedings; and may, at any time, permit either of the parties to amend any defect in the process or pleadings, upon such conditions as the said courts, respectively, shall, in their discretion, and by their rules, prescribe.<sup>2</sup>

*Court may amend mistakes, for want of form.*

§ 51. Judgment on confession shall amount to a release of errors.<sup>(1)</sup>

*1811—(11) Sec. 12.*  
Judgment on confession, a release of errors.

<sup>1</sup> No demurrer shall have any other effect than that of a general demurrer.—See this title,—§ 119.

<sup>2</sup> See "Judicial Proceedings—Errors and Appeals,"—§ 39.

(1) Therefore, neither a writ nor declaration is necessary to sustain a judgment by confession. *Caller v. Denson*, *Min. Rep.* 19. *Gayle v. Foster*, *ib.* 125: and nothing can be assigned as error, which arose or existed previous to the judgment by confession. *McConnell v. White*, *ib.* 112.



*Ib. Sec. 14.*  
No exception  
in ejectment,  
after issue on  
title.

1824—(20)

*Sec. 1.*  
Judgment to  
cure defects  
not previous-  
ly objected  
to.

*Ib. Sec. 4.*  
Judgment  
not to be re-  
versed for  
clerical mis-  
take.

*Ib. Sec. 5.*  
Court may  
correct cler-  
ical errors  
within three  
years.

§ 52. After issue joined, in an ejectment on the title only, no exception to form or substance shall be taken to the declaration in any court.

§ 53. No cause shall be reversed, arrested, or otherwise set aside, after verdict or judgment, for any matter on the face of the pleadings not previously objected to: *Provided*, The declaration contains a substantial cause of action, and a material issue be tried thereon.

§ 54. No cause shall be reversed by the supreme court or any circuit court, for any miscalculation of interest, or other clerical misprision in entering judgment, so as to give costs to the plaintiff in error; but in all such cases, the supreme court may order the judgment to be amended at the costs of the plaintiff in error.

§ 55. The circuit and county courts, respectively, shall and may, at any time within three years after final judgment, upon the application of either party, amend any clerical error, or misprision, in calculation of interest, or other mistake of a clerk, where there is sufficient matter apparent upon the record to amend by; and no cause shall be reversed for any such error or defect, by the supreme court, unless the court of original jurisdiction, where the same was determined, shall, upon application, refuse the amendment.

#### ERROR, CORAM VOBIS.

1820—(4)  
*Sec. 8.*  
Judge, on  
inspection  
of record,  
may grant  
writ of error,  
*coram vobis*.

§ 56. Any judge of the circuit courts, on an inspection of the record or the transcript thereof, of any cause in which final judgment shall have been rendered, may, if he shall be of opinion that any material mistake or error has been committed by a ministerial officer after the rendition of judgment, grant a writ of error *coram vobis*, returnable to the next term of the circuit court in which such judgment shall have been rendered, and may direct the said writ to operate as a *supersedeas*, on the party, applying for the same, entering into bond and security in the clerk's office, to be approved by the judge granting the same, conditioned for prosecuting the said writ of error to effect, and pay and satisfy the judgment of the court.<sup>a</sup>

<sup>a</sup> See § 58.

*Ib. Sec. 9.*  
Writ to be  
tried at re-  
turn term.  
Damages on  
affirmance.

§ 57. It shall be the duty of the court to which the writ of error *coram vobis* shall be returned, to try the same at the return term, and in all cases of affirmance, judgment shall be rendered against the plaintiff in error, and his, her, or their security, for the amount of judgment which shall have been suspended, together with five per cent. damages, interest and costs.

1822—(23)

*Sec. 1.*  
Judge may  
require judg-  
ment to be  
paid before  
granting  
writ.

§ 58. No writ of error *coram vobis* shall be granted, unless the defendant shall pay the amount of principal and interest actually due, before obtaining the same; unless otherwise ordered by the judge granting the said writ: *Provided*, That no security shall be required of the defendant under this act.

#### 8. JOINT OBLIGORS AND PARTNERS.

1807—(19)  
*Sec. 13.*  
Separate  
writs may

§ 59. *Whereas*, joint obligors and other persons, against whom a joint cause of action may exist, frequently reside in different districts, or counties, so that the same individual process cannot reach both or



all of such persons, whereby parties having just demands are greatly delayed in prosecuting the same: for remedy whereof, *Be it enacted*, That where any such joint cause of action shall exist, it shall be lawful for the plaintiff in such suit or action, to sue out two or more writs, directed to the sheriffs or other proper officers of the different counties where such defendants or parties jointly chargeable may be found, which process such sheriff or other officer shall execute accordingly, and return to the court from which the same issued, as in other cases; and such writs, so issued and returned, shall be filed together, and shall have the same force and effect, and the same proceedings and recovery may be thereupon had, as if one single writ had issued against all the defendants jointly; but it shall be the duty of the clerk or attorney issuing such process, to endorse thereon, that both or all of the said writs are for one and the same cause of action, or otherwise the same shall abate on the plea of the defendant.

issue against joint obligors, residing in different counties.

To be filed together when returned.

Clerk or attorney to endorse, that they are all for the same cause of action.

*Ib. Sec. 14.* On death of joint obligor, the debt shall survive against his representatives.

§ 60. *And whereas*, it is a rule of common law, that in case of the death of a joint obligor, the debt can never survive against his heirs, executors, or administrators, which rule is frequently injurious and oppressive to the surviving obligors: to remedy which, *Be it enacted*, That, in case of the death of one or more joint obligor or obligors, the joint debt or contract shall survive against the heirs, executors, and administrators of the deceased obligor or obligors, as well as against the survivor or survivors: and when all the obligors shall die, the debt or contract shall survive against the heirs, executors, and administrators of all the said joint obligors.

§ 61. Every joint bond, covenant, bill, promissory note, or judgment of any court of record of any state or territory of the United States, shall be deemed and construed to have the same effect in law, as a joint and several bond, covenant, bill, promissory note, or judgment; and it shall be lawful to sue out process and proceed to judgment against any one or more of the obligors, covenanters, or drawers of any such joint bond, covenant, bill, or promissory note, or against any one or more of the defendants to any such joint judgment.

1818—(2)  
*Sec. 1.* Joint obligations construed as joint and several, and process may issue accordingly.

§ 62. Whenever a writ shall issue against any two or more joint, or joint and several obligors, covenanters, or drawers of any such bond, covenant, bill, or promissory note, or against two or more of the defendants to any such joint judgment, it shall be lawful for the plaintiff or his attorney, at any time after the return of said writ, or an *alias* writ, to discontinue such action against any one or more of the defendants, on whom such writ, or *alias* writ, shall not have been executed, and proceed to judgment against any one or more of said defendants, on whom said writ shall have been executed, or proceed to issue an *alias* or *pluries* writ, at his election. (1)

*Ib. Sec. 2.* Pl'tf may discontinue action against such of def'ts as writ is not served upon, or issue *alias* or *pluries* writ.

§ 63. Whenever any cause of action may exist against two or more partners, of any denomination whatever, it shall be lawful to prosecute an action against any one or more of them; and when a writ shall be issued against all the partners of any firm, service of the same on any one of them, shall be deemed equivalent to a ser-

*Ib. Sec. 8.* Writs may issue against any one or more partners. Service on one partner

(1) Held not to extend to defendants jointly liable on an unliquidated account, as for goods, wares, &c., and that in such case, a discontinuance can be entered as to those not served with process, only after an *alias* and *pluries* writ returned "not found." *Kennedy v. Russell & Patten, Min. Rep. 77.* It embraces warrants issued by justices of the peace, and a discontinuance may be entered in court after an appeal. *Wade et al. v. Robinson, 1 Stewt. Rep. 423.* It also extends to actions against joint endorsers. *Martin v. Townsend, 2 Stewt. Rep. 329.*



equivalent to service on firm.

*Ib.* Sec. 12. Suit may be discontinued against such of def'ts as appear not to be partners.

1833—(18) Sec. 1. Joint obligors, when sued separately, may notify and move against co-obligors.

[a 1820—(13) Sec. 1.] Court to give judgment according to the justice of the case, and execution to issue simultaneously. [b 1833—(18) Sec. 1.]

*Ib.* Sec. 2. Defendant in motion may plead.

1830—(23) Sec. 1. Representatives of dec'd partners may be sued, without having first sued survivors.

Provisos.

1830—(22) Sec. 5. Not necessary to prove who are partners, unless put in issue.

vice on all; and the plaintiff may file his declaration and proceed to judgment as if the said writ had been served on each defendant; and the judgment shall be equally valid and effectual against all the defendants.

§ 64. Where any suit shall be instituted against two or more persons as partners in any firm, if one or more persons, not partners in said firm, shall have been sued as such, the court, before whom such suit is pending, shall discontinue said suit against such person or persons, as shall appear not to be partners in said firm, and proceed to judgment and execution against all or any of the defendants in such action who shall appear to be partners.

§ 65. Where suit is brought on any joint, or joint and several bond or note, and all the obligors or payers thereto shall not be served with process, it shall be lawful for all or any one of the obligors served with process, to give notice in writing to the other obligors or payers not so served, ten days before the trial term of said suit, that he or they have been sued on such bond or note, and that he or they will, at the time when said suit is tried, move the court where the same is depending, for judgment against him or them. "And it shall be the duty of said court, upon sufficient proof, to give judgment according to the right and justice of the case, and direct execution to issue, either for the obligee or payee, in such bond or note, or for the plaintiff or plaintiffs" in the motion, as may best comport with the justice of the case, and the rights of the parties, and with such endorsements as may be necessary to effect the object; and the executions, in both cases, shall be put into the hands of the sheriff or other officer at the same time.

§ 66. In all cases of motions being made as aforesaid, the defendant therein may plead any plea, which may be necessary to try the cause according to the right and justice thereof; and a jury shall be empaneled to try the issue joined between the parties, as in other cases.

§ 67. Where any person or persons shall have a cause of action against any co-partnership, any of the members of which may have died, such person or persons shall be permitted to sue and recover of the representatives of the deceased partner or partners, without first having prosecuted the surviving partners to insolvency: *Provided*, The plaintiff shall, before instituting such suit, make affidavit in writing, before the clerk of the proper court, or court itself, to be filed with the papers, that the survivor is insolvent or unable to pay the amount of the debt, or is beyond the jurisdiction of the court: *Provided, further*, That when any such representative is sued separately, which may be done without such affidavit, no execution shall issue against such representative until an execution is *bona fide* run and returned *nulla bona* as to the survivors.

§ 68. Where plaintiff shall bring suit as a firm or co-partnership, it shall not be necessary for proof to be made, that the individuals, named as plaintiffs, constitute the members of the firm, unless the defendant puts the same in issue, by plea in abatement.

## 9. JUDGMENT AND INQUIRY OF DAMAGES.

1807—(19) Sec. 38. Executions to issue on judgments for sum cer-

§ 69. In all judgments on demurrer, confession, *non sum informatus*, or by default, in actions of debt for a sum certain, the courts are authorized to issue executions for the sums of such judgments, with such interest, by way of damages, as may be legally due, and costs



of suit; and in all interlocutory judgments, a writ of inquiry shall be awarded, and such writ of inquiry may be executed at the next succeeding term,<sup>a</sup> and the damages assessed by a jury attending the court in which they were awarded.

§ 70. In all actions founded on any writing ascertaining the plaintiff's demand, or sum sued for, if judgment by default, *nihil dicit*, or by *non sum informatus*, or on demurrer, be entered therein, the court where the same action shall be pending, shall and may lawfully enter judgment for the debt or demand, and interest thereon, to be calculated by the clerk of such court, up to the time of rendering judgment, without the intervention of a jury to inquire of the damages, and award execution thereon, as in other cases. (1)

§ 71. Whenever the demurrer to the declaration, in an action of covenant, trespass, or trespass on the case, shall be overruled, and an inquiry of damages directed by the court, it shall be lawful for the inquiry thereof to be had at the same term at which such demurrer shall be overruled: *Provided*, That nothing, herein contained, shall be so construed as to authorize the said inquiry of damages to be made at the term to which the writ in said actions may be made returnable.

§ 72. In all actions of covenant, case, trespass, and *assumpsit*, when the declaration is filed in due time, and the defendant has failed to plead, a judgment by default may be taken, either in vacation, or at the next succeeding term, and a writ of inquiry executed at said term.

§ 73. It shall be lawful for the plaintiff or plaintiffs in any suit at common law, in any court of record in this state, to dismiss his, her, or their suit, at any time in vacation, on application to the clerk of the court in which said suit may be pending, upon giving the defendant or defendants, his, her, or their attorney, six days' notice of such application: *Provided*, That the notice aforesaid shall not be required in suits, in which the writ has not been executed.

§ 74. The clerks of said courts shall, before dismissing said suit, take a confession of judgment for the costs which may have accrued on the same up to the time of said dismissal; and he shall have full power and authority to issue execution therefor, in the same manner, and under the same regulations, as executions are now issued upon judgments rendered by the circuit and county courts of this state: *Provided*, That the costs shall be paid before dismissal, in all cases in which the plaintiff or plaintiffs do not reside in this state.

## 10. JURISDICTION.

[For the jurisdictions of the courts, respectively, See "Judiciary."]

§ 75. If any suit shall be commenced in any court for a less sum than such court can legally take cognizance of, or if any person shall demand a greater sum than is due, on purpose to evade this act, in either case the plaintiff shall be nonsuited, and pay costs: *Provided*, That if the plaintiff, or any other person for him, will make

(1) But if the common money counts be added in *assumpsit* on a promissory note, a *nol. pros.* must be entered as to them, before judgment final, without the intervention of a jury, or it will be error. *Moreland v. Ruffin*, Min. Rep. 18. Neither can final judgment be entered without a jury, upon an unliquidated account. *Martin v. Price*, *Id.* 68.



zance of,  
plaintiff to be  
non suited,  
unless he  
makes affida-  
vit.

Exceptions.

1837—(12)  
Preamble.

Sec. 1.  
Suits, how  
brought on  
bonds, bills,  
or notes, pay-  
able to a per-  
son, corpora-  
tion, or  
bearer.

*Ib.* Sec. 3.  
One citizen  
recovering  
judgment in  
federal court,  
in name of  
fictitious per-  
son, against  
another, lia-  
ble to be  
sued, &c.

an affidavit, (to be filed in the clerk's office,) that the sum, for which the suit shall be brought, is really due, but that for want of proof, or that the time limited for the recovery of any article, bars a recovery, in that case, such plaintiff shall have a verdict and judgment for what appears to be legally proved, anything to the contrary notwithstanding; *And provided, also,* That nothing, herein contained, shall be construed to extend to suits on bonds, penal bills, or any other action of debt grounded on a penalty, where the balance, due on such bond or penal bill, or other action of debt, is not of less value than the sums limited for bringing suits in the said court. (1)

Whereas, it has become a common practice, on notes and bills of exchange made payable to bearer, and on endorsements in banks, to sue thereon in the United States court in Mobile in the name of the pretended or fictitious bearer for the purpose of giving jurisdiction to said court contrary to the constitution of the United States, and all law and justice: for remedy whereof,

§ 76. *Be it enacted, &c.* That all bonds, bills, or notes, which shall be made payable to any person or persons, or bearer, or to any corporation or bearer, shall have the effect of creating an obligation, or liability, in favor of the corporation or person, or persons only, to whom any such bond or note may be expressly made payable, and no one but such corporation or such person or persons, or their endorsee or personal representative, shall have a right to maintain, in his own name, an action upon any such bond, bill, or note.

§ 77. When any citizen of this state shall institute a suit in any of the federal courts holden in this state, against any other citizen, in the name of a fictitious person, or in the name of any person not having the legal interest in the cause of action on which said suit may be instituted, the person so sued shall have a right to sue for and recover, from the person so procuring such suit to be instituted, the amount which shall be recovered from the person so sued, together with all damages and costs which may be incurred thereon. And the attorney, who may have instituted the suit in the federal court, shall be required to give testimony, and to disclose all facts, which may have come to his knowledge, in relation to the ownership of the cause of action instituted in the federal court, and likewise as to the residence of the plaintiff.

## 11. LIMITATION OF ACTIONS.

1802—(1)  
Sec. 1.  
Trespas, de-  
tinue, trover,  
debt, ac-  
count, and  
case, limited  
to six years.

*Ib.* Sec. 2.  
Assault, bat-  
tery, &c., to  
two years.

§ 78. All actions of trespass *quare clausum fregit*, all actions of trespass, detainue, trover, and replevin, for taking away of goods and chattels; all actions of debt founded upon any lending, or contract, without specialty, or for arrearages of rent due on a parole demise, and all actions of account, and upon the case, except actions for slander, and except also such actions as concern the trade of merchandise, between merchant and merchant, their factors or agents, shall be commenced within six years next after the cause of such actions shall have accrued, and not after.

§ 79. All actions of trespass for assault, menace, battery, wounding, and imprisonment, or any of them, shall be commenced and sued

(1) The decisions under this statute are contradictory. See *Howard v. Wear*, Min. Rep. 84. *Curtis v. Gary*, *ib.* 118. *Carter v. Dade*, 1 *Stewt. Rep.* 18.



within two years next after the cause of such actions shall have accrued, and not after.

§ 80. Every action upon the case, for words, shall be commenced and sued within one year next after the words spoken, and not after: *Provided, always*, That if any person or persons, who is, are, or shall be entitled to any of the actions hereinbefore specified, is, are, or shall be, at the time of any such cause of action accruing, within the age of twenty-one years, *feme covert*, or insane, then such person or persons may institute such action, so that the same be instituted within such time as is before limited, after his, her, or their coming to or being of full age, *discover*, or of sane memory.

*Ib. Sec. 3.*  
Actions on the case for words, to one year.  
Proviso as to minors, *femes covert*, and insane persons.

§ 81. Every action of debt, or covenant, for rent or arrearages of rent, founded upon lease under seal; and every action of debt upon any single or penal bill, for the payment of money only; or upon any obligation, with condition for the payment of money only; or upon any award, under the hands and seals of arbitrators, for the payment of money only, shall be commenced and sued within sixteen years after the cause of such action shall have accrued, and not after; but if any payment shall have been made on any such lease, specialty, or award, within or after the said period of sixteen years, then an action instituted on such lease, specialty, or award, within sixteen years after such payment, shall be good and effectual in law, and not after: *Provided, always*, That the time, during which the person who is or shall be entitled to any of the actions specified in this section, shall have been within the age of twenty-one years, *feme covert*, or insane, shall not be taken or computed as part of the said limited period of sixteen years.

*Ib. Sec. 5.*  
Actions on leases, specialties, and awards, limited to sixteen years,

from time of last payment.

Proviso.  
Minors, &c.

§ 82. Judgment in any court of record in this state, may be revived by *scire facias*, or an action of debt may be brought thereon, within twenty years next after the date of such judgment, and not after: *Provided*, That the time during which the person, who is or shall be entitled to the benefit of such judgment, shall have been under the age of twenty-one years, *feme covert*, or insane, shall not be taken or computed as part of the said limited period of twenty years.

*Ib. Sec. 6.*  
*Scire facias*, or action of debt on judgment, in 20 years.  
Proviso.

§ 83. No person, who now hath, or hereafter may have, any right or title of entry unto any lands, tenements, or hereditaments, shall make an entry therein, but within twenty years next after such right or title shall have accrued, and such person shall be barred from any entry afterward: (1) *Provided, always*, That the time during which the person, who hath or shall have such right or title of entry, shall have been under the age of twenty-one years, *feme covert*, or insane, shall not be taken or computed as part of the same limited period of twenty years.

*Ib. Sec. 7.*  
Entries of land within 20 years.

Proviso.

§ 84. If any person or persons, against whom there is or shall be any cause of action, as is specified in the preceding sections of this act, is, or are, or shall be, out of this state at the time of the cause of such action accruing, or at any time during which a suit might be sustained on such cause of action, then the person or persons, who is or shall be entitled to such action, shall be at liberty to bring the same against such person or persons, after his, her, or their

*Ib. Sec. 8.*  
Time of defendant's absence from the state not to be computed.

(1) In this state, a possession for twenty years, under claim of title, creates a presumption of a grant. *Stodder v. Powell*, 1 *Stewt. Rep.* 287.



*Ib. Sec. 9.*  
Suits respect-  
ing lands, to  
be com-  
menced  
within 30  
years.  
Proviso.

Not to affect  
U. S. lands.

*Ib. Sec. 10.*  
If plaintiff's  
judgment be  
reversed or  
arrested, suit  
may be re-  
commenced  
within one  
year thereaf-  
ter.

1816—(13)  
Sec. 1.  
Limitation  
of certain  
action for  
lands.

Provisos.

*Ib. Sec. 2.*  
Actions on o-  
pen accounts  
limited to 3  
years, ex-  
cept between  
merchants.

*Ib. Sec. 3.*  
Proviso for  
infants,  
*femes covert*,  
and persons  
non compos  
mentis.  
<sup>a</sup>The preced-  
ing act, § 78  
to 86.

return into this state ; and the time of such person's absence shall not be accounted or taken as a part of the time limited by this act. (1)

§ 85. Every real, possessory, ancestral, mixed, or other action, for any lands, tenements, or hereditaments, shall be brought and instituted within thirty years next after the right or title thereto or cause of such action accrued, and not after : *Provided, always*, That the time, during which the person, who hath, or shall have such right or title, or cause of action, shall have been under the age of twenty-one years, *feme covert*, or insane, shall not be taken or computed part of the said limited period : *Provided, also*, That nothing, in this act contained, shall be so construed, as in any wise to affect or interfere with the primary disposal of the vacant lands of the United States within this state.

§ 86. If in any of the said actions, specified in any of the preceding sections of this act, judgment be given for the plaintiff, and the same be reversed by writ of error ; or if a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff, then the said plaintiff, his or her heirs, executors, or administrators, as the case shall require, may commence a new action within one year after such judgment reversed or given against the plaintiff, and not after.

§ 87. No person or persons, body politic or corporate, who now have, or shall, or may hereafter have any estate, right, title, claim, or demand, by virtue of any title, which has not been confirmed by either of the boards of commissioners of the United States, appointed for settling and adjusting land claims in the Mississippi territory, and not recognized or confirmed by any act of congress, in or to any lands, tenements, or hereditaments in this state, shall after the expiration of three years from and after the passage of this act, have, prosecute, or maintain any action or suit at law for the recovery thereof, in any court in this state : *Provided*, That this act shall not extend to claims in that part of this state formerly a part of West Florida, which have been registered and not acted on by congress : *Provided, also*, That if any person or persons, who is, are, or shall be entitled to sue or prosecute such suit or action, or who hath, have, or shall have such right or title, shall be within the age of twenty-one years, *feme covert*, or insane, within the time limited by this act, then such person or persons, his, her, or their heirs or assigns, shall and may, at any time within three years next after his, her, or their coming to full age, of sound mind, or *discover*, bring, sue, and prosecute such suit or action, and at no time thereafter.

§ 88. No action shall be brought to recover any money due by open account, after the expiration of three years from the accruing of the cause of action : *Provided*, That nothing in this act shall apply to the trade of merchandise between merchant and merchant, their factors or agents.

§ 89. If any person or persons that is or shall be entitled to any of the personal actions enumerated and mentioned in this act, and in the act for the limitation of actions, and for avoiding vexatious lawsuits,<sup>a</sup> be, or shall be, at the time of any such cause of action, given or accrued, fallen or come, within the age of twenty-one years, *feme*

(1) When the statute of limitation begins to run, it continues to run, notwithstanding an intervening disability to sue. But if the time limited has not elapsed at the death of one having the right of action, his executor or administrator may sue within twelve months from his death. *Grice v. Jones*, 1 *Stewt. Rep.* 254.



*covert* or *non compos mentis*,—then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are before limited, after their coming to or being of full age, *discover*, or of sane memory, as other persons, having no such impediments, should have done.

§ 90. No action, suit, or motion, shall be maintained against the security or securities of any sheriff, constable, or other public officer of this state, for any misfeasance, malfeasance, or other cause whatsoever, hereafter committed, unless the same be commenced or prosecuted within six years next after the commission of the act complained of; or if the claim be in favor of an infant or person *non compos mentis*, or other person disabled by law from bringing suit, then within three years after such disability to sue shall cease to exist: *Provided*, That this limitation shall not be extended or applied to any action, suit, or motion, which may be maintained by law, against such officer, his executors, administrators or heirs; *And provided, further*, That nothing in this act shall be so construed as to have a retrospective operation upon suits now pending.

1832—(11)  
Sec. 1.  
Actions against securities of officers limited to six years, except as to infants, &c. not to apply to officers themselves.

Not retrospective.

§ 91. For any misfeasance, malfeasance, or other cause of action, heretofore committed by any sheriff, constable, or other officer, no suit, action, or motion shall be maintained against the security or securities of any such sheriff, constable or other officer, unless the same be commenced and prosecuted within three years after the passage of this act; subject always to the proviso in the first section of this act.

1832—(11)  
Sec. 2.  
Actions limited to 3 years for causes heretofore existing.

§ 92. Where any lands have been sold, or may hereafter be sold, under the decree of the court of chancery, to satisfy any mortgage, deed of trust, or other incumbrance, all rights or equities of redemption in any person not a party to the decree of sale, who shall claim under the mortgagor or grantor in the deed of trust or incumbrance, shall be forever barred and precluded, unless the suit for a redemption be commenced within five years from the execution of such decree of sale: *Provided*, That no suit shall be barred by the operation of this act, within five years from its passage.

1843—(30)  
Sec. 1.  
Where lands are sold under chancery decree, suits for redemption limited to 5 years.

§ 93. All actions for recovery of lands, tenements or hereditaments in this state, shall be brought within ten years after the accrual of the cause of action, and not after: *Provided*, That five years be allowed under both sections of this act, for infants, *femes covert*, insane persons, and lunatics, after the termination of their disabilities to bring suits.

1832—(20)  
Sec. 2.  
Actions for recovery of lands, &c. limited to ten years, except as to infants, &c.

## 12. MOTIONS AGAINST OFFICERS OF COURT.

§ 94. Whenever a motion shall be made against any officer of any of the courts of this state, for not paying over any money received by him in his official capacity, and the receipt of the same shall not appear by the record or any paper filed in the clerk's office, it shall be the duty of the court to cause an issue to be made up, and tried by the jury attending the court; and in case it shall be found by the jury that the same has been received by the officer against whom the motion shall be made, judgment shall be rendered by the court against the said officer, for the principal, interest, and such damages as are now in such cases directed by law.

1822—(20)  
Sec. 1.  
Where receipt of money by officer does not appear by the record, court shall direct the issue to be tried by a jury, and render judgment.

NOTE.—For the mode of proceeding against officers holding executions, See "Executions," § 8. Attorneys refusing to pay over money collected by them, are liable to the same summary proceeding as sheriffs. See "Attorneys,"—§ 5.



## 13. PENAL BONDS.

1811—(11)

Sec. 24.

Judgment to be entered only for principal and interest.

1834—(6)

Sec. 1.

Pl'd may assign any number of breaches, & damages allowed for such as are proved.

1b. Sec. 2.

Breaches may be assigned and tried after judgment by default for an indefinite sum.

1b. Sec. 3.

On payment of damages, stay of execution to be entered on record,—but judgment to remain as a further security for other breaches.

§ 95. In all actions which shall be brought upon any penal bond or bonds, for the payment of money, wherein the plaintiff shall recover, judgment shall be entered for no more than the principal and interest due on said bond.

§ 96. In all actions, in any court of record, upon any bond, or on any penal sum, for non-performance of any covenants or agreements contained in any indenture, deed, or writing, the plaintiff or plaintiffs may assign as many breaches as he or they may think fit; and the jury, upon trial of such action or actions, shall assess damages for such of the breaches as the plaintiff shall prove; and the like judgment shall be entered on such verdict, as heretofore has been usually done in such actions.

§ 97. If judgment shall be given for the plaintiff on confession for an indefinite sum, or on demurrer, or by *nil dicit*, in any such action the plaintiff may assign as many breaches as he shall think fit; upon which a jury shall be empaneled at the same term of the court in which judgment shall be rendered as aforesaid, to inquire of the truth of those breaches, and to assess the damages the plaintiff shall have sustained thereby.

§ 98. In case the defendant, after such judgment, and before execution, shall pay into court, to the use of the plaintiff, the damages assessed, and costs, a stay of execution shall be entered upon the record; or if, by reason of an execution, the plaintiff shall be fully paid all the damages and costs, and the charges of the execution, the defendant's body, lands, or goods shall be thereupon forthwith discharged from the execution, which shall likewise be entered upon record; but in each case the judgment shall, notwithstanding, remain as a further security, to answer to the plaintiff such damages as he may sustain by any further breach of covenant contained in the same indenture, deed, or writing; upon which the plaintiff may have a *scire facias*, upon the said judgment, against the defendant, his heirs, executors, or administrators, suggesting other breaches of the said covenants or agreements, and to summon him or them, respectively, to show cause why execution should not be awarded upon the said judgment; upon which there shall be the like proceeding as was in the action upon the said bond, for assessing of damages upon trial of issue joined upon such breaches, or inquiring thereof, upon empanelling a jury in manner aforesaid; and upon payment or satisfaction as aforesaid, of such future damages, costs and charges, as aforesaid, all further proceedings on the judgment are again to be stayed, and so *toties quoties*; and the defendant's body, land, or goods, shall be discharged out of execution as aforesaid.

## 14. PENALTIES.(1)

1828—(47)

Sec. 1.

Penalties re-

§ 99. In all cases, where a penalty may be incurred, or a sum of money forfeited by any person or persons, by reason of the violation

(1) Where a penalty is incurred under a statute, it must be recovered while the statute is in force: and when the statute is repealed, penalties incurred under it, though before the repeal, cannot be recovered. *The State v. Tombeckbee Bank*, 1 *Steurt. Rep.* 347. But the repeal of the statute, pending a writ of error, does not divest the plaintiff's right. *Taylor v. Rushing*, 2 *Steurt. Rep.* 160.



of, or non-compliance with, the provisions of any statute of this state, when by such statute no mode is pointed out for the recovery of such penalty, or the use, to which the same shall be applied, is not by such statute declared, the said penalty, sum or sums forfeited, shall be recoverable by action of debt in the circuit or county court of the county wherein such penalty may have been incurred, or sum forfeited, or before a justice of the peace of any such county; which action shall be brought and prosecuted, jointly, in the name of any such county as aforesaid, and of the person or persons suing for the same; and when recovered, shall inure, the one moiety to any such county, for the use of the paupers thereof, and the other moiety to the person or persons suing for and recovering the same.

§ 100. In all *qui tam* actions, or suits in the nature thereof, the party prevailing in the suit, shall be entitled to recover costs as in other actions at law.

§ 101. In all actions which may be brought by virtue of any statute which now is, or may hereafter be in force, for the recovery of any penalty or penalties, or of a part thereof; and when the whole, or a part thereof, shall inure to any county in which any such action shall be brought, it shall not be lawful, nor shall any defendant or defendants to any such action or actions, be permitted to except to the competency of any citizen as a juror, on account of his residence in the county in which such action or actions may be brought.

## 15. PETITION AND SUMMONS.

§ 102. When any person or persons, holding a bond or note for the direct payment of money, may desire to bring suit thereon, he or they may do so, by filing such bond or note, with the clerk of any court having jurisdiction thereof, with a petition purporting as follows: "State of Alabama, Circuit or County, ss. A. B., plaintiff, states that he holds a bond or note, (as the case may be) on the defendant, C. D., in substance as followeth: (here insert a copy of the bond or note;) yet the said debt remains unpaid, wherefore he prays judgment for his debt, and damages for the detention of the same, together with his costs, &c. A. B."

§ 103. If such bond or note is held by an assignee or endorsee, then, after reciting the bond or note, "on which is the following assignment or endorsement, (recite the assignment or endorsement,) whereby the plaintiff hath become the proprietor thereof, of which the defendant hath had due notice."

§ 104. A copy of the petition, with a summons annexed thereto, requiring the defendant to appear and answer the demand on the first day of the next succeeding term, shall be issued by the clerk, and served by the sheriff, by delivering a copy of the petition and summons to the defendant, and each of the defendants, if there be more than one.

§ 105. The sheriff in his return shall note the day on which it shall have been executed; but if the process be not executed five days before the return day thereof, a continuance shall be entered, unless a trial shall be had by consent of parties.

§ 106. The petition shall stand in the place of a declaration, and the defendant may appear and plead thereto, as in an action of debt, and issue be joined accordingly; which issue shall stand over to, and be tried at, the next term of the court, in which such suit may be

coverable by action of debt, when no mode is pointed out by the statute imposing them.

Appropriated to prosecutor, and paupers of the county.

1829—(14)  
Sec. 7.  
Citizens of the county entitled to the penalty, not incompetent as jurors.

1829—(21)  
Sec. 1.

Petition.

1829—(21)  
Sec. 2.  
Endorsement to be recited.

1829—(21)  
Sec. 3.  
Def't to be served with copy of the petition, and summons annexed.

1829—(21)  
Sec. 4.  
Process to be executed five days before return day.

1829—(21)  
Sec. 5.  
Petition in lieu of declaration.



instituted, unless a trial is had at the first term by consent of the parties.

*Ib. Sec. 11.*  
This law re-  
medial.

§ 107. Nothing in this act shall be so construed as to take away any remedy or defence heretofore allowed by law, nor shall this act be otherwise construed, than as a remedial statute.

*Ib. Sec. 12.*  
Clerk's fees.

§ 108. The clerk shall be allowed for issuing a summons and copying the petition, fifty cents.

## 16. PLEADING.

1807—(19)  
Sec. 33.  
Any number  
of pleas al-  
lowed, pro-  
vided, &c.  
*Non est fac-*  
*tum* must be  
sworn to.

*Ib. Sec. 34.*  
Plea in abate-  
ment must be  
verified.

1819—(6)  
Sec. 7.  
Declaration  
to be filed  
within three  
days after re-  
turn of writ,  
but court  
may enlarge  
the time.  
Cause dis-  
missed for  
want of de-  
claration, at-  
torney liable  
for the costs,

and to an ac-  
tion for dam-  
ages.

Def't shall  
appear, and  
plead or de-  
mur, within  
three days  
after declara-  
tion filed, or  
judgment by  
default.

§ 109. The defendant in any cause, may plead as many several matters as he may judge necessary to his defence: *Provided*, He be not admitted to plead and demur to the whole; *And provided*, also, That no plea of *non est factum* shall be admitted to be pleaded, but when accompanied with an affidavit of its truth. (1)

§ 110. No plea in abatement shall be received in any court, unless accompanied with an affidavit of the truth of such plea, or the truth of it otherwise appear.

§ 111. The following rules and regulations shall be observed in the said courts, until otherwise directed by law, viz: That every plaintiff or his attorney when employed in any suit, in any of the circuit or county courts<sup>1</sup> of this state, shall file his declaration in the clerk's office, any time within the first three days of the term, to which the writ is made returnable; and on failure thereof, such suit shall be dismissed by the court, at the cost of the plaintiff; *Provided*, nevertheless, That the judge on good cause shown, may grant a longer time; which cost being paid by the plaintiff to the clerk of said court, he or they, paying such cost in consequence of a declaration not being filed in due time, as aforesaid, may warrant such attorney for all such cost paid by him as aforesaid, and the receipt of the clerk shall be evidence in support of such claim; and the justice, before whom such warrant shall be tried, may give judgment and issue execution thereon; and such attorney shall be further liable to the action of such plaintiff, for such damages as he or they may have sustained, in consequence of such declaration not having been filed as aforesaid. The defendant shall appear and plead or demur, within the first three days after the time allowed for filing declaration; otherwise, the plaintiff may have judgment by default, which in actions of debt shall be final, unless where damages are suggested on the roll; and in that case, and in all others not herein specially provided for, when the recovery shall be in damages, a writ of inquiry shall be executed at the next succeeding term:<sup>2</sup>

<sup>1</sup> See "Judiciary—County Court,"—§ 12.

<sup>2</sup> See this title,—§ 69 to 72.

(1) A joint and several plea of *non est factum* by a firm, may be verified by the affidavit of either partner. *Garner et al. v. Simpsons, Min. Rep. 67.* An affidavit is sufficient if it state special facts, from which the truth of the plea may be inferred. *Tindal's Administratrix v. Bright, Min. Rep. 103.* An administrator, pleading *non est factum* to an instrument purporting to be made by his intestate, must verify the plea by oath:—But an affidavit to the best of his knowledge and belief, is sufficient. *Martin, Administrator, v. Dorich, 1 Stewt. Rep. 479.* A defendant is not compelled to plead *non est factum* generally, with an absolute affidavit, but may state in a special plea the particular facts which amount to a denial of the legal validity of the instrument, or may deny the authority of the agent who made it. *ib.* A replication of *non est factum*, is not required to be verified on oath. *Parks & Burke v. Greening, Min. Rep. 178.*



*Provided*, That where the nature of the actions requires special pleading, the time for pleading may be enlarged:—where the defendant pleads specially, the plaintiff shall reply or demur, within three days after the time allowed for filing the declaration, or a *non pros* may be entered by the defendant; and if the plaintiff replies, and in his replication tenders an issue, the defendant shall join issue or demur in three days, otherwise the plaintiff may have judgment; and where the defendant rejoins to the plaintiff's replication, he shall file his rejoinder within three days, or judgment shall go against him, unless the term for pleading shall be enlarged as aforesaid, and the same time shall be given, and rules observed, through the whole course of the proceedings: *Provided*, That, in every case, the pleadings shall be made up during the term to which the process is returned, (1) unless the time be extended by the consent of parties, their attorneys, or by direction of the court. Where a special verdict shall be found, a case agreed, a demurrer filed, or a bill of exceptions to the evidence tendered, the court may, for a good cause shown, continue the same until the next term for argument. When a plea in abatement shall be pleaded, and upon argument, the same shall be adjudged insufficient, the plaintiff shall recover against the defendant, full costs to the time of overruling such plea, including the costs of court.<sup>a</sup>

Time for special pleading may be extended. Throughout the proceedings an issue tendered must be replied to within 3 days, or judgment of *non pros*, or by default, may be entered,—but pleadings shall be made up at return term, unless by consent of parties.

Costs, on overruling plea of abatement.

§ 112. No declaration, plea, or replication, which sets forth or states any obligation or instrument of writing under which such party claims a benefit, and which is alleged to be lost, and not in the power of the party to produce said instrument or obligation in court, shall be received in any of the courts of this state, unless such party make oath of the truth of such statement in his declaration, plea, or replication, as the case may be.

<sup>a</sup>See ante Sec. 69, 70, 71. 1823—(29) Sec. 1. Lost instrument must be pleaded on oath.

§ 113. It shall not be required of the plaintiff, in any suit by attachment, founded upon a cause of action not due, to file his pleadings before the first term of the court, after such cause of action falls due, and the same may be dated as of the term when filed.

1832—(3) Sec. 1. Declaration in attachment may be filed when debt falls due.

§ 114. In all suits, commenced in any county court of this state, or in any circuit court, which, by law, is held one week only, the plaintiff shall file a declaration within the two first days of the term to which the writ shall be returned “executed;” and the defendant shall plead or demur within the two succeeding days of the term; and if any other or further pleadings be necessary, the same shall be filed, severally and successively, within two days, each, until an issue of fact or law be made up: *Provided*, That, in every case, the pleadings shall be made up during the term, unless further time be given for making up the same, or any part thereof, by the court, or by the parties or their attorneys; and if, in any suit commenced as aforesaid, the plaintiff shall fail to file a declaration, or any other pleading which may be necessary on his part, within the time herein prescribed, such suit shall be dismissed or the plaintiff *non prosed* as the case may be, on motion of the defendant or his attorney; and if the defendant in any such suit shall fail to file a plea or demurrer or any other pleadings which may be necessary on his part to be filed, within the time herein prescribed, the plaintiff, on motion by

1837—(13) Sec. 1. Time of filing declarations, and pleading to issue.

(1) Judgment by default, for want of a plea, cannot be taken until three days after the time allowed for filing declaration, although the term of the court may not continue so long. *Rather v. Owen*, 1 *Stewt. Rep.* 38. *Gwynn v. Weaver*, *ib.* 219.



himself or his attorney, shall be entitled to judgment by default, or for want of a plea, rejoinder, or any other pleading, as the case may be.

1839—(24)  
Sec. 1.  
No judgment  
to be entered  
at appear-  
ance term,  
except, &c.

§ 115. In all suits, instituted in any court having jurisdiction thereof, for the purpose of collecting money, no judgment shall be rendered at the appearance term, except by the consent of parties, from the failure of the defendant or defendants, to plead or enter appearance, as now by law required.

*Ib.* Sec. 2.  
Defendant  
must plead  
to the merits  
the first  
week of said  
term.

§ 116. The defendant or defendants shall be compelled to plead to the merits within the first week of the appearance term, or upon failure thereof, forfeit his, her, or their right to make any defence thereafter: *Provided*, That this act shall not affect the laws now in force, giving the banks of this state a summary process in the collection of debts.

*Ib.* Sec. 3.  
No tax fee, if  
no defence.

§ 117. No tax fee shall be collected from a defendant or defendants in any case where no defence has been made.

### DEMURRERS.

1807—(17)  
Sec. 6.  
Frivolous  
demurrer  
may be re-  
jected on  
motion.

§ 118. When any demurrer to evidence, demurrer to the declaration or plea, in any cause depending before the several courts in this state, shall appear frivolous, and intended for delay, it shall be lawful for the court where the cause is depending, to reject such demurrer on motion, and proceed to trial as if the same had not been offered.

1824—(20)  
Sec. 2.  
All demur-  
rers general.

Pleadings  
may be  
amended.

Plea to the  
merits, after  
demurrer  
overruled.

§ 119. No demurrer shall have any other effect than that of a general demurrer; and the courts, at any time previous to the term at which such demurrer shall stand for argument, may allow the party, on application, to amend his pleadings without terms; and, after judgment in favor of the demurrer, may authorize an amendment on terms. And if the demurrer be overruled, the court shall grant leave to the party demurring, to withdraw the demurrer, and plead to the merits of the action, upon such terms as the justice of the case may require.

*Ib.* Sec. 3.  
Demurrers to  
be tried  
when cause  
is called.

1835—(15)  
Sec. 2.  
Party plead-  
ing over, af-  
ter demurrer  
overruled,  
may still as-  
sign it for  
error.

§ 120. All demurrers to any part of the pleadings in suits at law, shall be tried when the cause is called for trial, and shall not be delayed until motion day, or the last four days of the term.

§ 121. When a demurrer shall be overruled, and the party filing the demurrer shall plead over, he shall not be considered as waiving any matter covered by the demurrer, but may afterwards assign every such matter, and the overruling the demurrer in error, or in arrest of judgment.

### 17. PROCESS.

Con. Ala.  
Art. 5.  
Sec. 17.

§ 122. The style of all process shall be "The State of Alabama."

1807—(20)  
Sec. 16.  
Process shall  
be returnable  
on first day  
of term, and  
executed five  
days before  
court.

§ 123. All original process, and all subsequent process thereupon, to bring any person or persons to answer to any action, suit, bill, or plaint, in any court in this state, (except subpoenas for witnesses, which, in term time, may be made returnable immediately,) shall be issued by the clerk of such court, and shall be returnable to the first day of the term, and shall be executed at least five days before



the return thereof ; (1) and if any person shall take out any writ or process while such court is sitting, or within five days before the beginning of the term, such writ or process shall be made returnable to the term next after that then held, or to be held within five days, as aforesaid, and not otherwise : and all writs and process issued, made returnable, or executed, in any other manner, or at any other time, than is herein before directed, may be abated on the plea of the defendant : " *Provided, nevertheless*, That nothing, herein contained, shall be construed to invalidate or vacate any process, warrant, or precept, to be issued by any of the judges of the said court, or any justice of the peace, or clerk of any court, or any original prosecution, in behalf of the state ; but that the same may be issued at any time, and made returnable to any day of the term : and the like proceedings on criminal suits and prosecutions, shall be agreeable to the practice heretofore in use in the territorial government, except where the same is, or may be, otherwise directed, by this or some other act.<sup>1</sup>

Otherwise issued or executed may be abated.

[a 1819—(6) Sec. 6.] Criminal process may be issued at any time returnable to any day of the term. Proceedings as heretofore under the territorial government.

§ 124. It shall not be necessary that any declaration, or copy thereof, accompany such writ or process, but a copy of such writ shall be left with the defendant, at the time of serving, and by the officer serving the same. (2) And it shall be the duty of the clerk, or plaintiff's attorney, to endorse on the back of the writ, the cause of the action, the nature of the specialty, or the other grounds on which the action is founded : and the sheriff, on executing the writ, shall deliver to the defendant, together with a copy of the writ, a copy of the said endorsement. (3)

1807—(19) Sec. 31. Cause of action to be endorsed, and copy of writ and endorsement to be left with defendant.

§ 125. All writs issued from any of the courts, shall bear teste in the name of, and be signed by, the clerk of the court from which they may be issued.

1818—(18) Sec. 1. How tested and signed.

§ 126. The clerk or attorney, issuing process, shall mark thereon the day on which such process issued ; and the sheriff or other officer receiving the same, in order to execute, shall, in like manner, mark on each process the day on which he received it ; and every clerk, attorney, sheriff, or other officer, neglecting so to do, shall forfeit and pay the sum of one hundred dollars, to be recovered by action of debt in any court of record having cognizance thereof, by any person who will sue for the same, with costs.

1819—(6) Sec. 5. Day of issuance and receipt by the sheriff, to be endorsed. Penalty for neglect.

§ 127. When a writ or other process shall issue to the sheriff of the county where the defendant resides, service of such writ or other process shall be good and valid, if the said sheriff shall execute the said writ or other process in any adjacent county, or in lands to which the Indian title has not been extinguished, and return the same to the court from which the writ or other process issued.

1818—(14) Sec. 7. May be served in any adjacent county, or on Indian lands.

<sup>1</sup> The previous part of the section, from which this proviso is taken, is substantially the same with the one to which it is appended, but is omitted as not being so full and explicit.

(1) Writs should be executed and returned in the name of the sheriff, and not in that of the deputy. *Land v. Patteson, Min. Rep. 14.* But if the deputy uses the name of the principal, so that the act done purports to be the act of the principal, though done by his deputy, the return is sufficient. *Briggs & McClure v. Greenlee, ib. 123.*

(2) Acknowledgment of service by one partner is binding on the firm. *Click & Morgan v. Click, Min. Rep. 79.*

(3) Omission of endorsement is cause of error, unless cured by some act of the defendant, such as appearing, pleading, &c. *Howell & Smith v. Hallett, Min. Rep. 102.* After the return term of the writ, no exception can be taken for the want of an endorsement. *Tankersley v. Richardson, 2 Stewt. Rep. 130.*



1819—(10)

Sec. 4.

When to

bear teste.

1811—(11)

Sec. 1.

On *non est*  
*inventus* in a  
local action,  
plaintiff may  
have a *testa-*  
*tum capias*,  
or judicial at-  
tachment to  
any county.

§ 128. All writs, returnable to any court of record, shall bear teste on the day on which the same shall be issued.

§ 129. On the return of a *capias ad respondendum*, against any person or persons legally liable to be sued in the court from which such writ may issue, that the defendant or defendants is or are not to be found, the plaintiff or plaintiffs may have a *testatum capias*, or judicial attachment, to any other county, which process shall be executed according to its commands, and returned to the court from which the same issued, as in other cases: *Provided*, Nothing in this section shall extend to any but such actions as are termed in law local actions.

1807—(24)

Sec. 2.

Infants may  
sue by their  
next friends.

1821—(30)

Sec. 1.

Writs and  
executions to  
be returned  
3 days before  
first day of  
term.

§ 130. In every case, where persons who are within age may sue, their next friends shall be admitted to sue for them.

§ 131. It shall be the duty of the sheriffs in the several counties in this state, to return all writs and executions to the clerk's office from which they shall issue, at least three days previous to the term of the court to which they shall be returnable; and if any sheriff shall fail to return any writ or execution, according to the provisions of this act, he shall be liable to all the penalties, provided by the laws now in force, for failing to return any writ or execution to the first day of the term of the court to which they are returnable.<sup>1</sup> (1)

1836—(30)

Sec. 1.

All original,  
*mesne*, and  
final process,  
to be directed  
"to any sher-  
iff of the state  
of Alabama"

§ 132. All original, *mesne*, and final process, issued from the clerk's office of any court in this state, shall be directed "To any Sheriff of the State of Alabama," and it shall be the duty of any sheriff (or coroner, if the case require it,) in the state, in whose hands any such process shall be placed for service, to execute and return, or to return, if it cannot be executed, the same as required by law, when process is directed specially to him: *Provided*, That no bail writ or *ca. sa.* shall be executed on any defendant, who is a freeholder in the state, out of the county of his permanent residence or any adjoining county, unless the plaintiff, his agent or attorney, shall first make affidavit, that the defendant has left the county of his residence, for the purpose of avoiding service of such process in the proper county.

1839—(22)

Sec. 3.

Also, "to any  
coroner of  
the state of  
Alabama."

§ 133. When any process shall issue, which shall be required to be served or executed by the coroner, the same shall be directed "To any Coroner of the State of Alabama."

## 18. REAL AND POSSESSORY ACTIONS.

1816—(12)

Sec. 1.

In certain  
real actions,  
improve-  
ments to be  
paid for, be-  
fore writ of  
possession is  
awarded.

§ 134. In all actions, real or possessory, hereafter brought or prosecuted in any court in this state, for any lands, tenements, or hereditaments, against any person or persons, body politic or corporate, deriving title to such lands, tenements, or hereditaments, by, from, or under the United States, or by, from, or under any Spanish grant, or order of survey, recognized or confirmed by the United States' board of commissioners, east or west of Pearl river, the person or persons prosecuting any such action against any person or persons, body politic or corporate, claiming and deriving title under the United States,

<sup>1</sup> See "Executions,"—§ 21, 22.

(1) The statute, requiring the return of execution three days before court, admits of a reasonable excuse for a failure so to return: and where judgment has been rendered against a sheriff, he may have relief in chancery by shewing a sufficient excuse for the failure, and also for not making a defence at law. *Roberts & Battle v. Henry*, 2 *Stewt. Rep.* 42.



or by, from, or under any Spanish grant, or order of survey recognized and confirmed by either of the said boards of commissioners, and recovering judgment for any lands, tenements, and hereditaments, from any person or persons, body politic or corporate, having derived title, by, from, under, or through the United States, or any Spanish grant, or order of survey recognized and confirmed as aforesaid, the person or persons so obtaining judgment, shall not have any writ of possession or seizin, nor obtain possession or seizin of such lands, tenements, or hereditaments, until he, she, or they shall have first paid to the person or persons, body politic or corporate, possessing the title thereto, derived from or under the United States, or by, from, or under any Spanish grant, or order of survey recognized and confirmed as aforesaid, the full value of all improvements made thereon, as the same shall be estimated, valued and ascertained on oath, by five appraisers; which appraisers shall be, by rule for that purpose, appointed by the court in which such judgment shall have been obtained, unless the parties shall agree on the value of such improvements, or agree on and submit to appraisers to value the same: *Provided, always*, That this act shall not extend and be so construed, as to compel any plaintiff or plaintiffs in any of the said actions to pay for any improvement or improvements, not needful and necessary, which may be made on the premises, after the service of the writ or declaration in ejectment.

Appraisers may be appointed by the court to value improvements.

Unnecessary improvements after service of declaration, not included.

§ 135. If any person or persons, body politic or corporate, deriving title to any lands, tenements, or hereditaments, by, from, or under the United States, or under any Spanish grant, or order of survey recognized and confirmed as aforesaid, be disseized, ousted, or turned out of possession of said lands, tenements, or hereditaments, by any person or persons claiming, or pretending to claim title to such lands, tenements, or hereditaments, and on a trial in due course of law, a judgment should be rendered in favor of the title of said person or persons, ousting, dispossessing, or disseizing the person or persons, body politic or corporate, deriving title by, or under the United States, or by order of any Spanish grant, or order of survey recognized and confirmed as aforesaid, it shall and may be lawful for the person or persons, body politic or corporate, so disseized, ousted, or turned out of possession, to recover from the person or persons so ousting, dispossessing, or disseizing, the full value of all improvements made on said lands, tenements, or hereditaments, together with double damages and costs, in any court having jurisdiction of the same.

*Id.* Sec. 2. Persons ousted, and failing in an action for the premises, may recover the value of the improvements.

with double damages and costs.

## 19. SCIRE FACIAS AND NOTICE.

§ 136. The return of any sheriff, that he has served, executed, or made known, any *scire facias*, shall be good and sufficient, without its being served, executed, or made known in the presence of witnesses; and a *scire facias* to the legal representatives of any plaintiff or defendant, who may have died pending the suit, may at any time issue from the office of the clerk of the court in which the said cause may be pending.

1826—(39)  
Sec. 4. *Scire facias* need not be served in presence of witnesses. May issue to legal representatives at any time.  
1818—(14)  
Sec. 10.

§ 137. In all cases pending before any of the courts of record, written notice to the attorney of record shall be as valid and legal, to all intents and purposes, as if served on the party in person.

Written notice to attorney, sufficient.  
1826—(34)  
Sec. 1. Notice may

§ 138. All notices in writing, which may be necessary or proper to be given by either plaintiff or defendant in any suit, either at



be served by common law or in chancery, may be served by the sheriff of any county, and the return of the sheriff of the service of the same, shall be good and sufficient in any court of record in this state.

*Ib. Sec. 2.* § 139. The sheriffs of the several counties in this state, shall have and receive the sum of fifty cents for each notice served by them, by virtue of this act.

*1836—(30) Sec. 2.* § 140. Whenever it becomes necessary to give notice of the taking of a deposition or for any other purpose, in any cause pending in law or equity in this state, and the opposite party resides out of the county in which such cause is pending, and has no known agent in said county, nor attorney of record in the cause, it shall be held sufficient service of such notice, to file the same with the clerk of the court in which such cause is pending.

## 20. SET-OFF AND TENDER.

*1824—(3) Sec. 2.* § 141. <sup>1</sup>In all cases, where there are or shall be mutual debts subsisting between the plaintiff and defendant, or if either party sue or be sued as executor or administrator, where there are mutual debts subsisting between the testator or intestate and either party, one debt may be set against the other, (1) either by being pleaded in bar, or given in evidence on the general issue, or notice given of the particular sum intended to be set off, and on what account the same is due, notwithstanding such debts may be deemed in law to be of a different nature; but if either debt arose by reason of a penalty, the sum intended to be set off shall be pleaded in bar, setting forth what is justly due on either side, any law, usage, or custom to the contrary notwithstanding; "and if it shall appear that the defendant hath fully paid or satisfied the debt or sum demanded, the jury shall find for the defendant, and judgment shall be entered, that the plaintiff shall take nothing by his writ, and shall pay the costs. And if it shall appear that any part of the sum demanded be paid, then so much as is found to be paid shall be defalked and deducted out of the plaintiff's demands; and the plaintiff shall have judgment for the residue only, with costs of suit. But if it appear to the jury that the plaintiff is overpaid, then they shall give in their verdict for the defendant, and withal, certify to the court, how much they find the plaintiff to be indebted, or in arrear to the defendant, more than will answer the debt or sum demanded: (2) *and it shall be the duty of the court to enter up judgment for the amount so certified, for which execution may issue as in other cases: Provided, always,* That in all cases where a tender shall be made, and full payment be offered by discount or otherwise, in such specie as the party by contract or agreement ought to do, and the party to whom such tender shall be made doth refuse the same, and yet afterward will sue for the debt or goods so tendered, the plaintiff shall not recover any costs in such suit: *Provided, also,* That in all cases

*Debt accruing by penalty to be pleaded in bar.*  
[a 1799—(1) Sec. 1.] Judgment, where plaintiff's demand is fully, partially, or over-paid.

[<sup>b</sup> 1827—(37) Sec. 2.] Pl'ff after tender, not entitled to costs.

<sup>1</sup> The first section of this act repeals so much of the act of 1799, "as permits defendants, under the plea of payment, to give any bond, bill, receipt, or account, in evidence."

(1) Plaintiff's note assigned to defendant cannot be set off, unless assigned before suit brought. *Gross v. Van Wiek et al., Min. Rep. 7.*

(2) The holder of a note may erase credits entered by mistake. Whether so entered, must be determined by the jury, and not the court. *Tubb v. Madding, Min. Rep. 129.*



where the plaintiff and defendant having accounts to produce one against another, shall, by themselves, or attorneys, or agents, consent to a rule of court, for referring the adjustment thereof to certain persons mutually chosen by them in open court, (the award or report of such referees being made according to the submission of the parties, approved of by the court, and entered upon the record, or roll,) shall have the same effect, and be deemed and taken to be as available in law, as a verdict given by twelve men. And the party to whom any sum or sums of money are hereby awarded to be paid, shall have judgment for the recovery thereof, as is hereinbefore directed, concerning sums found and settled by a jury.

Award of referees under a rule of court, to have the force of a judgment.

## 21. SUITS AGAINST THE STATE.

§ 142. The general assembly shall direct, by law, in what manner, and in what courts, suits may be brought against the state.

Con. Ala. Art. 6. Sec. 9.

§ 143. The several circuit courts of this state shall have original jurisdiction in all civil causes, in which the citizens or inhabitants of the state of Alabama may be parties plaintiff, and the state of Alabama may be defendant, saving to the plaintiffs or defendant, in all cases, the right to remove their said causes to the supreme court, after judgment by appeal or writ of error, pursuant to the provisions of the existing laws.

1827—(7) Sec. 1. Circuit court to have jurisdiction against the state, where its citizens are plaintiffs. Appeals allowed.

§ 144. The manner of instituting suits against the said state, shall be by the plaintiff or plaintiffs, in suit at law, suing out of the circuit court clerk's office, in which the action may be originated, a summons, and in cases of chancery, a subpoena in chancery, returnable to the next succeeding term of the circuit court of the county in which the action may be brought; which summons or subpoena shall be served on the governor by the sheriff of the county in which the suit may be brought, or by the sheriff of the county in which he may be at the time of the commencement of the suit, and shall be deemed the leading process in such suit, and shall have the like effect and incidents, as writs and other subpoenas in chancery, sued out, and made returnable to said courts, respectively. \*And it shall be the duty of the court, to receive and record all testimony applicable to the merits of the case, and to give judgment for or against the state, as to justice shall appertain: *Provided*, That, if the plaintiff shall demand a trial by jury, the court shall thereupon *empanel a jury of by-standers*,<sup>1</sup> and it shall be the duty of said jury, in all cases, to return a special verdict, and, in that case, it shall not be the duty of the court to record the testimony; but the judgment of the court shall be rendered upon such verdict.

Ib. Sec. 2. Suits to be commenced by summons or subpoena;

to be served on governor.

[a 1820—(11) Sec. 9.] Court to receive and record testimony.

Jury to return a special verdict.

§ 145. No appeal or writ of error shall be prosecuted by the state to reverse any judgment obtained against it, in any of the circuit courts of this state, except such writ of error be sued out, or such appeal be taken within the time prescribed by law, in cases to which the state is not a party.

Ib. Sec. 3. Appeals by state limited to usual time

§ 146. It shall be the duty of the comptroller of public accounts, on the certificate of any clerk of the circuit court in this state, or of

Ib. Sec. 4. Comptroller, on certificate

<sup>1</sup> This clause is taken from the act which directed suits against the state to be commenced by petition to the supreme court. It is the only part of that act which is not repealed or superseded by the act of 1827, and seems necessary, so far as it is applicable to proceedings in the circuit courts, to supply the deficiency of the existing law.



of clerk to draw his warrant for amount of judgment.

Certificate not to issue for 6 months. Judge to attest certificate.

*Ib. Sec. 5.* Duty of attorney general and solicitors. Writ of error to state without security.

*Ib. Sec. 6.* Court may appoint assistant counsel. His compensation.

the supreme court of this state, that a judgment has been rendered in the court of which he is clerk, against the state in favor of any plaintiff, specifying the amount of recovery, to draw his warrant on the state treasurer, in favor of the party recovering such judgment, for the amount thereof: *Provided*, That no clerk of any circuit court shall issue any certificate pursuant to the foregoing provisions, until six months after the rendition of the judgment; *And provided, further*, That, in addition to the certificate of the clerk of the circuit court, the judge who presided at the trial shall certify that the same is correct.

§ 147. It shall be the duty of the solicitor or attorney-general attending any circuit court where any suit is pending against the state, to attend to the same in behalf of the state, whose duty it shall be to order a writ of error on the rendition of any judgment against the state, if he thinks proper, which shall be issued by the clerk as a matter of course, without security, and shall operate as a *superseas*.

§ 148. The court, before whom any suit is tried pursuant to the foregoing provisions of this act, shall, if necessary, appoint one additional attorney, to aid the solicitor or attorney-general; who, with the solicitor or attorney-general, shall receive for his services out of the public treasury, a compensation to be fixed by the said judge, who shall certify the same to the comptroller.

## 22. TRIAL AND EVIDENCE.

1807—(19)  
*Sec. 5.* Judges not to charge on matters of fact.

*Ib. Sec. 37.* Nonsuits and new trials.

§ 149. The judges of the superior and inferior courts shall not charge juries with respect to the matters of fact, but may state the testimony, and declare the law. (1)

§ 150. Every person desirous of suffering a nonsuit on trial, shall be barred therefrom, unless he do so before the jury retire from the bar: (2) and no more than two new trials shall be granted in the same cause: and two nonsuits shall be considered equal to a verdict against the party suffering the same.

1820—(28)  
*Sec. 10.* Either party may challenge four of the jury.

1811—(11)  
*Sec. 3.* Writing on which suit is founded, to be evidence of the debt, and not to be denied, except by plea and affidavit.

§ 151. In all jury trials, either party shall have the right to a peremptory challenge of four of the jury.

§ 152. Whenever suit shall be commenced in any of the courts founded on any writing, whether the same be under seal or not, the court before whom the same is depending, shall receive such writing as evidence of the debt or duty for which it was given; and it shall not be lawful for the defendant or defendants in any such suit, to deny the execution of such writing, unless it be by plea, supported by the affidavit of the party putting in such plea; which affidavit shall accompany such plea, and be filed therewith, at the time such plea is filed; which affidavit may be made before any justice of the peace, or before the clerk of the court where such suit may be depending.

*Ib. Sec. 4.* Consideration of writing under seal, may be

§ 153. Whensoever any suit is depending in any of the courts, founded on any writing, under the seal of the person to be charged therewith, it shall be lawful for the defendant or defendants therein,

(1) The judge may lawfully sum up the evidence to the jury, and instruct them hypothetically. *Brandon v. Snows & Cunningham*, 2 *Stewt. Rep.* 255.

(2) The court, unless so directed by statute, cannot order a nonsuit. *Taylor's adm'r v. Seaton*, *Min. Rep.* 75.



by a special plea, to impeach, or go into the consideration of such bond, in the same manner as if the said writing had not been sealed.

§ 154. All private acts of assembly may be given in evidence, without being specially pleaded, and as printed with the general acts of the legislature.

§ 155. Papers read in evidence to the jury on the trial of any cause, though not under seal, may be carried from the bar by the jury.

§ 156. Interpreters may be sworn truly to interpret, when necessary.

§ 157. All certificates issued in pursuance of any act of congress, by any of the boards of commissioners, register of a land office, or any other person duly authorized to issue such certificate upon any warrant, or order of survey, or to any donation or preemption claimants, for any lands in this state, shall be taken and received as vesting a full, complete, and legal title, in the person in whose favor the said certificate is granted, to the lands therein mentioned, and his, her, or their assigns, so far as to enable the holder of such certificate to maintain any action thereon, and the same shall be received in evidence as such in any court in this state.

§ 158. When any suit shall be instituted by any person or persons, as assignee or assignees, of any bond or other writing, it shall not be necessary for the plaintiff or plaintiffs to prove the assignment or assignments, unless the defendant or defendants shall annex to the plea denying such assignment or assignments, an affidavit, stating that such defendant or defendants verily believe, that some one or more of such assignments were forged, or make oath to the same effect in open court, at the time of filing such plea.

§ 159. It shall be the duty of the secretary of state for the state of Alabama, on application, to give certified copies of any of the acts of the several states, or of the United States, which are now or may hereafter be in his office, and the copy so certified shall be evidence in any court of law or equity in this state. (1)

§ 160. Any party, plaintiff or defendant, in any action at law pending in any circuit or county court in this state, wishing a discovery from the adverse party, to be used in evidence at the trial of such action, may file written interrogatories to such party, and call upon him to answer the same in solemn form, on his oath or affirmation; and if, upon such interrogatories being filed, it shall appear to the court, by the oath of the party filing the same or otherwise, that answers to such interrogatories will be material evidence in the cause, and that the interrogatories themselves are pertinent, and such as the adverse party would be bound to answer upon a bill of discovery, in a court of chancery, the court shall allow such interrogatories, and shall make an order requiring the adverse party to answer the same in writing, and in solemn form, on his oath or affirmation; and the answers to such interrogatories, being so given and filed, shall be evidence at the trial of the cause, in the same manner and to the same purpose and extent, and upon the same condition, in all respects, as if they had been procured upon a bill in chancery for discovery, but no further, or otherwise; and if the party to whom interrogatories shall be so propounded, and who shall be so required

impeached  
by special  
plea.  
*Ib.* Sec. 10.  
Private acts  
may be given  
in evidence  
without being  
specially pleaded.  
*Ib.* Sec. 11.  
Papers may  
be carried  
from the bar.  
*Ib.* Sec. 13.  
Interpreters.

1812—(16)  
Sec. 8.  
Certificates  
to be received  
as evidence  
of title  
to lands.

1819—(6)  
Sec. 37.  
Assignment  
need not be  
proved, un-  
less defend-  
ant files an  
affidavit of  
its forgery.

1828—(32)  
Sec. 2.  
Laws of U.  
S. or other  
states, may  
be proved by  
certificates  
of secretary  
of state.

1837—(14)  
Sec. 1.  
Discovery  
may be com-  
pelled in suit  
at law, by fil-  
ing written  
interrogato-  
ries—ans-  
wers to be  
evidence on  
trial of  
cause, as if  
procured by  
bill of discov-  
ery in chan-  
cery.

(1) The acts of congress, as published in the pamphlet acts of the session, may be read on the trial of a cause, without proof that the pamphlet is authentic. *White v. Saint Guirons, Min. Rep.* 331.



by the court to answer the same, shall, in sixty days after notice, and a copy of such interrogatories served on him, fail to make answer in manner aforesaid, or shall answer the same evasively, the court may attach him and compel him to answer in open court, or it may continue the cause and require more direct and explicit answers, or if the party to whom such interrogatories shall be propounded, be defendant in the action, it may set aside his plea or pleas, and give judgment against him, as by default; or if the plaintiff may order, his suit to be dismissed with costs, as shall, in the discretion of the court, be deemed most just and proper: *Provided*, That nothing, herein contained, shall preclude any party to such action from exhibiting his bill in chancery, for a discovery against any adverse party, as heretofore, if he shall elect to do so; but any party, having elected to file such interrogatories, shall not be allowed afterwards to exhibit a bill in chancery, for discovery touching the same matters.

1839—(22)  
Sec. 4.  
In suits  
on ac-  
counts for  
sums not  
over \$100—  
pl'tf's oath  
may be rec'd,  
unless, &c.

§ 161. In all suits to be commenced upon accounts for a sum not exceeding one hundred dollars, the oath of the plaintiff shall be received as evidence of the demand, unless the same be controverted by oath of the defendant; but this section shall not apply to the case of executors and administrators, trustees and guardians when sued.

### 23. VENUE.

1807—(19)  
Sec. 11.  
Where per-  
sonal and  
other actions  
are to be  
commenced  
and tried.

§ 162. All civil causes and suits shall be commenced in the courts of the county in which the defendant may be found, or if it be a real action, an action of ejectment, or trespass *quare clausum fregit*, then in the county in which the cause of action arose; and all causes and actions, so commenced in any court, shall be brought to issue, according to the rules that may be ordained and established for the orderly conducting and management of business in the said courts; and if the said issue be an issue in fact, the same shall be tried by the jurors attending the said court, at the next succeeding term, if there be time for trial thereof, and the same be not continued by order of court; and all causes, remaining on the docket of any court, at the rising thereof, shall be continued over, of course, for trial at the next succeeding term.

*Ib.* Sec. 12.  
Freeholders  
not to be sued  
out of the  
county of  
their resi-  
dence.

<sup>a</sup> See post  
§ 169.

1812—(16)

Sec. 4.  
In division or  
establish-  
ment of  
counties,  
causes to be  
transferred.

§ 163. No freeholder of this state shall be sued out of the county of his permanent residence, provided the same be within this state, unless it be in the actions enumerated in the last section; nor shall any person, who may reside in this state, be held to bail, if sued out of the district or county of his residence and freehold. <sup>a</sup> (1)

§ 164. In all cases where, by the division of any county, new counties have been established, and in the establishment of all future counties, all unfinished business in the courts of such county previous to such division, which would be properly cognizable in the courts of such newly established county, whether of suits, probate of mat-

(1) This does not embrace motions against tax-collectors. *Armstrong & Pinkston, v. The State, Min. Rep.* 160. It extends to suits before justices of the peace. *Read v. Coker, 1 Stewt. Rep.* 22. A plea in abatement, that defendant was a resident citizen of another county when the writ was served, is not sufficient, unless it appear he was a freeholder of such county. *Wilson v. Oliver, 1 Stewt. Rep.* 46. A certificate of the register of the land office of the United States, showing a purchase of land, part payment, and an extension of time given for the balance, is sufficient evidence of a freehold, to support a plea in abatement; and in the absence of proof to the contrary, is to be taken as genuine. *Cox v. Jones & Jones, 1 Stewt. Rep.* 379. Residence and freehold in another county may be pleaded in abatement and proved, notwithstanding it may contradict the sheriff's return. *Ib.*



ters, or other business, shall be transferred to the proper court of such new counties, to be there acted on and determined as if they had therein originated.

§ 165. Any person or persons may be sued in the county in which he, she, or they may be found, without regard to his, her, or their residence, if oath be made, before the clerk issuing the writ, or any justice of the peace, that such person or persons hath or have gone from the county of his, her, or their residence, for the purpose of avoiding service of process in their proper county.

§ 166. Judges of the circuit courts, within their respective circuits, at or before the first trial term of any suit, civil or criminal, shall have power to change the venue thereof, on good and sufficient cause, set forth and duly supported by oath or affirmation: and when a change of venue shall be allowed in any suit, the trial thereof shall be adjourned, under the direction of the judge, to the nearest adjoining county, which is free from the like exception, and the trial of such cause, in the court to which it may be adjourned, shall be by a jury of freeholders or householders: *Provided*, That such change of venue shall in no instance be allowed, more than once in the same cause or suit: *Provided, also*, That in criminal prosecutions, the right to the change of venue, under the provisions of this section, shall be confined to the party prosecuted.

§ 167. It shall be lawful for the several courts within this state, when any real action may be instituted or pending in such courts, to order the change of venue in such action to any adjacent county, on the party wishing such change making affidavit, that he, she, or they verily believe that justice cannot be done in the county where such suit may be pending: *Provided*, That the party, opposed to such change of venue, shall have the right to take the testimony of aged or infirm witnesses, in all cases where a change of venue may be prayed, by *dedimus potestatem*, to be directed to any justice of the quorum or of the peace, in the county from whence the said venue may be changed; the party wishing such *dedimus*, previously making an application for that purpose, to the judge who may preside in the judicial district where such suit may be pending, and giving the opposite party sufficient notice of the time and place of taking such testimony; which testimony, in form aforesaid taken, together with the *dedimus*, shall be sealed up, by the person by whom the said testimony may be taken, and be directed to the clerk of the court to which the venue may be changed, and shall be read in evidence in the case in which it may be taken, subject to such restrictions and formalities as are now prescribed by law.

§ 168. When the venue has been changed in any real action, and judgment had and rendered in favor of the plaintiff, it may be lawful, and it is hereby required, that the clerk of the court, where such judgment shall be rendered, shall issue the writ of *habere facias possessionem*, in favor of the plaintiff, directed to the sheriff of the county where the action originated.

§ 169. It shall be lawful to sue any common or other carrier or carriers by water, whether they be the owner or owners of any vessel, steam-boat, barge, flat-boat, or other water craft, navigating any river or bay of this state, and which shall transport, convey or carry any goods, wares, merchandise, cotton, lumber, or passengers, for freight, hire or reward, in the county, where any contract or agreement, whether expressed or implied, for any such transportation, conveying or carrying, shall have been made or entered into: *Provided*, The defendant or defendants, or either of them, to any such suit so

1818—(14)  
Sec. 8.  
Suit in any  
county, the  
plaintiff  
making oath.

1819—(6)  
Sec. 12.  
Venue may  
be changed,  
on sufficient  
cause shown.

Only once in  
same cause.  
In criminal  
cases allowed  
only to the  
defendant.

1818—(6)  
Sec. 1.  
Change of  
venue in real  
actions may  
be to any ad-  
jacent coun-  
ty, but oppo-  
site party  
shall have  
*dedimus* to  
take the tes-  
timony of  
aged or in-  
firm witness-  
es.

1b. Sec. 2.  
Writ of *ha-  
bere facias  
possessionem*  
to be issued  
by the clerk  
of the court  
where suit is  
tried.

1835—(16)  
Sec. 2.  
Common  
carriers may  
be sued in  
county  
where con-  
tract was  
made, if  
found there-  
in.



to be brought, shall be found in the county where any such contract was made, as well as in the county or counties in which the defendant or defendants, or either of them, to any such suit, may reside or inhabit.

1843—(31)  
Sec. 1.  
A change of  
venue may  
be had for  
good cause  
before final  
trial.  
Provisos.

§ 170. A change of venue may be had on good cause shown at any time before the final trial: *Provided*, That the venue shall not be changed more than once in any cause by the same party: *Provided, also*, That when a change of venue shall take place in a cause brought in a county court, which is hereby allowed, under the rules now provided for as respects causes pending in the circuit courts, the same shall be ordered and sent for trial to a circuit court in some other county: *Provided*, That when a motion for change of venue shall have been made and overruled, a change shall not be allowed at any subsequent term.

## JUDICIAL PROCEEDINGS IN CHANCERY.

1. Equity Jurisdiction.
2. Mode of Proceeding in Equity.
3. Change of Venue.
4. Injunctions.

### 1. EQUITY JURISDICTION.

Con. Ala.  
Art. 5. Sec. 8.  
Chancery  
courts.

§ 1. THE general assembly shall have power to establish a court or courts of chancery, with original and appellate equity jurisdiction; and until the establishment of such court or courts, the said jurisdiction shall be vested in the judges of the circuit courts, respectively: *Provided*, That the judges of the several circuit courts shall have power to issue writs of injunction, returnable into the courts of chancery.

1841—(23)  
Sec. 1.  
Three chan-  
cery div'ns.  
Ib. Sec. 2.  
Forty chan-  
cery districts.

§ 2. The State of Alabama shall be divided into three chancery divisions, as is hereinafter provided.

§ 3. The state shall also be divided into forty chancery districts, to be numbered from one to forty, inclusive, to wit:

The counties of Mobile and Baldwin, shall constitute the first district:

The counties of Washington and Clarke, the second district:

The county of Sumter, the third district:

The county of Marengo, the fourth district:

The county of Monroe, the fifth district:

The counties of Conecuh and Covington, the sixth district:

The county of Butler, the seventh district:

The counties of Dale, Coffee and Henry, the eighth district:

The county of Barbour, the ninth district:

The county of Pike, the tenth district:

The county of Montgomery, the eleventh district:

The county of Lowndes, the twelfth district:

The county of Wilcox, the thirteenth district:

The county of Russell, the fourteenth district:

The counties of Chambers and Randolph, the fifteenth district:

The county of Macon, the sixteenth district:

The county of Tallapoosa, the seventeenth district:

The counties of Coosa and Autauga, the eighteenth district:

The county of Dallas, the nineteenth district:



The county of Perry, the twentieth district :  
 The county of Greene, the twenty-first district :  
 The county of Tuskaloosa, the twenty-second district :  
 The county of Pickens, the twenty-third district :  
 The counties of Fayette and Marion, the twenty-fourth district :  
 The counties of Walker and Jefferson, the twenty-fifth district :  
 The county of Bibb, the twenty-sixth district :  
 The county of Shelby, the twenty-seventh district :  
 The county of Lauderdale, the twenty-eighth district :  
 The county of Franklin, the twenty-ninth district :  
 The county of Lawrence, the thirtieth district :  
 The county of Limestone, the thirty-first district :  
 The county of Madison, the thirty-second district :  
 The county of Morgan, the thirty-third district :  
 The counties of Blount and St. Clair, the thirty-fourth district :  
 The county of Marshall, the thirty-fifth district :  
 The county of Jackson, the thirty-sixth district :  
 The county of De Kalb, the thirty-seventh district :  
 The county of Cherokee, the thirty-eighth district :  
 The county of Benton, the thirty-ninth district : and,  
 The county of Talladega, the fortieth district.

§ 4. The chancery districts, numbering from one to thirteen, inclusive, shall constitute and compose the Southern chancery division. *Ib. Sec. 3. Southern division.*

The chancery districts, numbering from fourteen to twenty-seven, each inclusive, shall constitute and compose the Middle chancery division ; and, *Middle division.*

The chancery districts, numbering from twenty-eight to forty, each inclusive, shall constitute and compose the Northern chancery division. *Northern division.*

For each of said chancery divisions, there shall be elected by joint vote of both houses of the general assembly, a chancellor, who shall hold his office for the term of six years, and shall reside in the division for which he may be elected ; said chancellor shall hold said chancery courts hereby established, and shall be vested with and exercise the powers, and perform the duties hereinafter specified. *[a 1839—(25) Sec. 3.] Chancellor for each division. Term of office.*

§ 5. There shall be held in each of said chancery districts, one chancery court in each and every year. *Ib. Sec. 4. One court annually in each district. 1839—(25)*

§ 6. Said chancellors shall appoint a register for each of said courts, hereby established, in each of their respective divisions, whose duty it shall be to perform all the duties pertaining to the office of register and master in chancery, for the court at which he may be so appointed ; and said registers shall hold their office for the term of four years, and shall keep their offices at the places of holding courts in their respective districts. *Sec. 5. A register to be appointed in each. Term of office.*

§ 7. The said registers, before they enter upon the discharge of their duties, shall respectively give bond in the sum of ten thousand dollars, with securities, to be approved of by said chancellor, payable to the governor, and his successors in office, for the faithful discharge of the duties of their respective offices ; which bonds shall not become void by reason of any recovery thereon, but may be sued on, as often as a cause of action may arise ; and said registers shall receive for their services, such fees and allowances, as are now allowed to clerks of the circuit courts for like services. *Ib. Sec. 6. Register to give bond, & receive same fees as circuit court clerk for like services.*

§ 8. The court-house in the county of Mobile shall be the place of holding the said courts for the first district : *1841—(33) Sec. 5.*

The court-house in the county of Clarke, shall be the place of holding said courts for the second district : *Where the courts shall be holden in the several districts.*



The court-house in the county of Conecuh shall be the place of holding said courts for the sixth district :

The court-house in the county of Henry shall be the place of holding said courts for the eighth district :

The city of Wetumpka shall be the place of holding said courts for the eighteenth district :

The court-house in the county of Fayette shall be the place of holding said courts for the twenty-fourth district :

The court-house in the county of Jefferson shall be the place of holding said courts for the twenty-fifth district :

The court-house in the county of Blount shall be the place of holding said courts for the thirty-fourth district :

The court-house in the county of Chambers shall be the place of holding said courts for the fifteenth district : and,

The court-houses in the counties composing all other districts shall be the respective places of holding said courts in each of said districts.

§ 9. The said chancery courts shall be holden in the several districts at the times following, to wit :

#### FOR THE SOUTHERN DIVISION.

1841—(21)  
Sec. 6, &  
1843—(33)  
Sec. 1.  
consolidated.

Time of holding said courts in the several districts.

In the first district, on the first Monday in April, in each and every year, and may continue in session two weeks :

In the second district, on the third Monday in March, in each and every year, and may continue in session one week :

In the third district, on the first Monday in March, in each and every year, and may continue in session one week :

In the fourth district, on the second Monday in March, in each and every year, and may continue in session one week :

In the fifth district, on the fourth Monday in March, in each and every year, and may continue in session until the first Monday in April :

In the sixth district, on the third Monday in April, in each and every year, and may continue in session one week :

In the seventh district, on the fourth Monday in April, in each and every year, and may continue in session one week :

In the eighth district, on the second Monday in October, in each and every year, and may continue in session one week :

In the ninth district, on the third Monday in October, in each and every year, and may continue in session one week :

In the tenth district, on the fourth Monday in October, in each and every year, and may continue in session one week :

In the eleventh district, on the first Monday after the fourth Monday in October, in each and every year, and may continue in session one week :

In the twelfth district, on the second Monday after the fourth Monday in October in each and every year, and may continue in session one week :

In the thirteenth district, on the third Monday after the fourth Monday in October, in each and every year, and may continue in session one week.

#### FOR THE MIDDLE DIVISION.

In the fourteenth district, on the first Monday in May, in each and every year, and may continue in session one week :



In the fifteenth district, on the second Monday in May,<sup>a</sup> in each<sup>[a1841—(37)]</sup> and every year, and may continue in session one week :

In the sixteenth district, on the third Monday in May, in each and every year, and may continue in session one week :

In the seventeenth district, on the fourth Monday in May, in each and every year, and may continue in session one week :

In the eighteenth district, on the first Monday after the fourth Monday in May, in each and every year, and may continue in session one week :

In the nineteenth district, on the second Monday after the fourth Monday in May, in each and every year, and may continue in session one week :

In the twentieth district, on the third Monday in June, in each and every year, and may continue in session one week :

In the twenty-first district, on the fourth Monday in June, in each and every year, and may continue in session one week :

In the twenty-second district, on the first Monday after the fourth Monday in June, in each and every year, and may continue in session one week :

In the twenty-third district, on the second Monday after the fourth Monday in June, in each and every year, and may continue in session one week :

In the twenty-fourth district, on the third Monday after the fourth Monday in June, in each and every year, and may continue in session one week :

In the twenty-fifth district, on the fourth Monday after the fourth Monday in June, in each and every year, and may continue in session one week :

In the twenty-sixth district, on the fifth Monday after the fourth Monday in June, in each and every year, and may continue in session one week :

In the twenty-seventh district, on the sixth Monday after the fourth Monday in June, in each and every year, and may continue in session one week.

#### FOR THE NORTHERN DIVISION.

In the twenty-eighth district, on the first Monday in May, in each and every year, and may continue in session one week :

In the twenty-ninth district, on the second Monday in May, in each and every year, and may continue in session one week :

In the thirtieth district, on the third Monday in May, in each and every year, and may continue in session one week :

In the thirty-first district, on the fourth Monday in May, in each and every year, and may continue in session one week :

In the thirty-second district, on the first Monday after the fourth Monday in May, in each and every year, and may continue in session one week :

In the thirty-third district, on the second Monday after the fourth Monday in May, in each and every year, and may continue in session one week :

In the thirty-fourth district, on the third Monday after the fourth Monday in May, in each and every year, and may continue in session one week :

In the thirty-fifth district, on the fourth Monday after the fourth Monday in May, in each and every year, and may continue in session one week :



## JUDICIAL PROCEEDINGS IN CHANCERY.

In the thirty-sixth district, on the fifth Monday after the fourth Monday in May, in each and every year, and may continue in session one week :

In the thirty-seventh district, on the sixth Monday after the fourth Monday in May, in each and every year, and may continue in session one week :

In the thirty-eighth district, on the seventh Monday after the fourth Monday in May, in each and every year, and may continue in session one week :

In the thirty-ninth district, on the eighth Monday after the fourth Monday in May in each and every year, and may continue in session one week :

And in the fortieth district, on the ninth Monday after the fourth Monday in May, in each and every year, and may continue in session one week.

[a 1843—(33)  
Sec. 3.]  
Separate  
court for  
Montgomery

\*And the Judge of the southern chancery division is hereby required to hold a separate court for the county of Montgomery, on the first Monday in July, in each and every year, in addition to the court now required by law.

1839—(25)  
Sec. 4.  
Chancery  
jurisdiction  
transferred  
from circuit  
to chancery  
courts.

§ 10. All the powers, now exercised by the present judges of the circuit courts in chancery, are hereby withdrawn from said judges and said circuit courts, and vested in the courts of chancery, and the chancellors hereby established : *Provided*, That the several judges of the supreme and circuit courts may award writs of *injunction* and *ne exeat* returnable into said courts of chancery.

1841—(23)  
Sec. 8.  
Causes pend-  
ing at the  
passage of  
this act, to be  
transferred  
to proper  
district.

§ 11. All causes, now pending in the chancery courts, as now established by law, shall, on the application of either complainant or defendant, be transferred to the district in which the defendant resides ; and such transfer, when made, shall be done by order of the court, entered on its minutes ; and it shall, thereupon, be the duty of the register of the court, wherein the cause is now pending, immediately thereafter to deliver to the register of the court, to which the said cause shall be ordered to be transferred, the original papers in such suit, together with a transcript of all entries, orders and decrees, made in such cause in the court, from which said cause is ordered to be removed, all of which shall be certified by the said register delivering the same : *Provided*, That it shall be lawful for all causes, now pending in any chancery court, to be and continue in such court, and be there disposed of, in the same manner as they would have been, if this act had not passed ; unless an order be made for their transfer to some other court, as is herein above provided.

Proviso.

1839—(25)  
Sec. 8.  
Sheriffs, &c.  
to execute  
and return  
all process  
issued from  
chancery  
courts.

§ 12. The several sheriffs and coroners, of the respective counties in this state, shall execute and return all process awarded and issued from said courts of chancery, and be officers of said courts ; and the sheriffs or coroners of the counties, in which said courts of chancery shall be holden, shall be sheriffs of said courts of chancery, and shall attend its sittings ; and they shall receive, for the services they render in obedience to said courts of chancery, such fees as are now allowed for like services.

Ib. Sec. 9.  
All chancery  
jurisdiction  
vested in  
said courts.

§ 13. All causes and suits in chancery, which may hereafter arise in any of the counties of this state, shall be returnable to, and determined by, the said courts of chancery, to which the unfinished chancery business, pending in the circuit courts of said counties, is required to be transferred by the seventh section of this act.



§ 14. Said chancellors shall be vested with, and exercise all the powers and perform all the duties, which are usual and customary for chancellors to do and perform. *Ib. Sec. 10. Chancellors' powers and duties.*

§ 15. Said chancellors shall, each, receive for their services, two thousand dollars annually, to be paid to them quarter-yearly. *Ib. Sec. 11. Salary.*

§ 16. The supreme court shall have appellate jurisdiction of all causes, which may be tried in said courts of chancery. *Ib. Sec. 13. Sup. court has appellate jurisdiction. 1841—(23)*

§ 17. The registers in chancery are empowered and authorized in vacation to grant *writs of injunction* and *ne exeat*, and all special orders, which it would be competent for the chancellor to grant, subject, however, to be annulled or modified by the chancellor on a proper application to him. *Ib. Sec. 10. Registers to grant writs of injunction &c. in vacation.*

§ 18. The chancellor and registers, respectively, shall have power to administer oaths in all cases in chancery, when oaths are necessary and proper. *Ib. Sec. 11. Oaths.*

§ 19. Whenever the presiding chancellor shall be incompetent to hear a cause, by reason of his being interested in the subject matter of the suit, or by reason of other legal objection, it shall be his duty, on motion of either of the parties, to transfer the same to the nearest court free of the objection: *Provided, however,* With the consent of the parties, he may retain the cause, and hear and determine the same. *Ib. Sec. 12. When presiding chancellor is incompetent, cause may be transferred.*

§ 20. The registers shall have full power and authority, in vacation, to make interlocutory orders and decrees, in any cause pending in any of said courts, in their respective districts: *Provided,* That the opposite party shall have reasonable notice of the time and place of making an application for such order or decree; and the orders or decrees, so made, shall have the same effect, as if made in term time; but said orders and decrees shall, at all times, be subject to the revision, order and control, of the chancellor. *Ib. Sec. 13. Registers to make interlocutory orders and decrees in vacation—opposite parties having notice.*

§ 21. All laws now in force, regulating the practice in the separate courts of chancery in this state, not inconsistent with the provisions of this act, are hereby made applicable to said courts as here-in provided. *Ib. Sec. 14. Laws, not inconsistent, still in force.*

§ 22. The said court shall have and exercise all the power, authority and jurisdiction, incident to courts of chancery, and may ordain and establish all necessary rules for the orderly conducting of business in equity, and for hearing and taking orders on interlocutory matters in vacation. *Ib. Sec. 43. Chancery courts may establish rules.*

§ 23. The said courts of chancery may direct an issue in fact to be tried whenever they judge it necessary; and such issue shall be tried in the same manner, by a jury, and the same mode of proceedings observed in the trial thereof in every respect, as if it were an issue in fact joined in a suit in law in the court to which it shall be sent for trial. *Ib. Sec. 44. May direct issues in fact to be tried. How tried.*

§ 24. Each of the chancellors shall have power and authority to issue writs of injunction, and of *ne exeat*, when the case may require it; but every person shall be discharged from a writ of *ne exeat*, on giving good and sufficient security; and for that purpose, the chancellor of the court granting such writ, shall endorse thereon, the sum and number of securities required. *Ib. Sec. 45. May issue writs of injunction and ne exeat.*

§ 25. Said courts shall have power and authority to order and issue all such process, as hath usually belonged to courts of chancery; and in cases where decrees shall be passed for a sum of money, it shall be lawful for execution to issue thereon against the defendant's goods and chattels, lands and tenements, or against the defendant's body, to satisfy such decree and costs, in like manner, and with the *Ib. Sec. 46. May issue all usual chancery process, and executions for money decreed.*



same force and effect, as executions may issue on judgments obtained at law in the superior courts of this state.

*Ib. Sec. 48.*  
Costs.

§ 26. Costs in equity shall be paid by either party, at the discretion of the court.

1811—(11)  
*Sec. 23.*  
Chancellors  
may examine  
answers  
in vacation.

§ 27. The chancellors shall have power, in vacation, to examine all answers to bills in chancery: and if any defendant or defendants, have been held to bail, any chancellor, on application, may, and he is hereby authorized to reduce or discharge such bail taken as aforesaid.

1812—(16)  
*Sec. 10.*  
Jurisdiction  
of gambling  
considera-  
tions.

§ 28. The courts of equity shall have jurisdiction in all cases of gambling consideration, so far as to sustain a bill for discovery, or to enjoin judgments at law.

1813—(2)  
*Sec. 9.*  
May convey  
title by de-  
cree of spe-  
cific per-  
formance, &  
award writ  
of possession

§ 29. The courts of chancery shall, in all cases where a bill is pending, or may be hereafter filed, to compel the specific performance of a contract, have power to make a decree, vesting title to any property, real or personal, in the complainant, as fully and effectually as if conveyed by the defendant, in conformity with the contract on which such bill and decree are founded: and a writ shall issue to the sheriff or other officer, commanding him forthwith to put such complainant in possession.

*Ib. Sec. 18.*  
Court may  
stay proceed-  
ings, on a bill  
of review.

§ 30. The said court, when a bill praying a review of the proceedings, in which a decree shall have been pronounced, shall be presented, may, upon such bill and the circumstances of the case, as the same shall appear satisfactory, direct the proceedings on such decree to be stayed, until a decree on the said bill of review shall be made, or until further order of the said court; or the said court may refuse to grant a stay of proceedings in that case as may seem right: *Pro-*

May require  
security.

*vided*, That the said court may, in either of the said cases, direct such security to be given, and in such places, as is usual in cases of injunction, or such other security as may seem reasonable: *Pro-*

Bills of re-  
view limited  
to 3 years.

*vided*, That no bill of review shall be brought on motion made therefor, except it be within three years from the time of pronouncing such decree; saving to infants, *femes covert*, persons *non compos mentis*, persons imprisoned or beyond seas, a right to move a bill of review, within three years after such disability shall have been removed.

Proviso.

1820—(19)  
*Sec. 3.*  
Equitable ti-  
tle to lands,  
liable by suit  
in equity.

§ 31. The equitable title or claim to land or other real estate, shall hereafter be liable to the payment of debts by suit in chancery, and not otherwise; and when a bill shall be filed for that purpose, all persons concerned in interest, shall be made parties thereto.

1843—(55)  
*Sec. 1.*  
Trustee  
wishing to  
resign, regis-  
ter to give  
notice to  
non-resi-  
dents inter-  
ested.

§ 32. When any trustee shall desire to resign his or her trust, in the manner now prescribed by law, and any person, interested in the trust estate, shall reside beyond the limits of this state, on affidavit being made of the fact, it shall be the duty of the register in chancery of the proper chancery district, to cause publication to be made in some newspaper printed in the state, for three months, stating the time and place where the application will be made and determined.

*Ib. Sec. 2.*  
Trustee dy-  
ing, register  
to appoint  
another, on  
application.

§ 33. When any trustee shall die, on the application of any person interested in the trust estate, to the register in chancery of the proper chancery district, it shall be his duty to appoint one or more trustees in the stead of such deceased trustee, as in the case of the resignation of trustees: *Provided*, That the notice prescribed by law shall in all cases be given.



## 2. MODE OF PROCEEDING IN EQUITY.

§ 34. The mode of commencing suits in equity, shall be by filing a bill with the clerk of the circuit court of the county in which the suit is instituted, wherein the clerk shall issue a *subpœna ad respondendum*, with a copy of the bill, which shall be served by the sheriff of the county where the defendant resides, or may be found, and returned to the first day of the next term.

1822—(1)  
Sec. 1.  
Suits commenced by bill.  
Service on defendant.

§ 35. The defendant shall file his answer or demurrer within thirty days after the service of the *subpœna*, unless within that period he shall obtain further time from the clerk of the said court, or from a circuit judge, on reasonable cause shown, which further time shall not extend beyond the first day of the next term, otherwise the bill shall be taken *pro confesso*, and the complainant, if he deem it necessary, may take an attachment to compel an answer.

Ib. Sec. 2.  
Defendant to answer or demur within thirty days, or bill taken *pro confesso*, and attachment may issue.

§ 36. No plea or special demurrer shall be filed to any bill or answer, but it shall be lawful for the defendant to embrace all the matter of his plea and demurrer, either general or special, in his answer, and shall have the same benefit thereof as if the same had been pleaded: *Provided*, That the defendant may demur generally to the bill, which, if overruled, he shall pay costs thereon, file a sufficient answer, and go to trial forthwith, if the complainant requires it, otherwise the bill shall be taken *pro confesso*, and an attachment may issue to compel an answer.

Ib. Sec. 3.  
No plea or special demurrer to be filed,  
but defendant may demur generally.

§ 37. At the time of filing his answer, the defendant shall also file his exceptions, if he chooses to except to the bill, for scandalous or impertinent matter; and the complainant also, on or before the first day of the term next after the filing of the answer, shall file his exceptions thereto, if he chooses to except for scandal, impertinence, or insufficiency:—All exceptions shall be heard and determined by the presiding judge, in open court, the first term after they are filed, and if filed on the first day of the term, they shall be heard and determined during that term:—If any of the exceptions are sustained, the party filing them shall be entitled to his costs thereon, and a continuance of the suit to the next term if he prays it: if all the exceptions are overruled, the opposite party shall be entitled to his costs thereon, and a continuance if he prays it: *Provided*, That where exceptions filed to the insufficiency of an answer are sustained, the defendant shall forthwith file a sufficient answer and come to trial immediately, if the complainant prays it; unless the court, for good cause, grant further time, otherwise the bill shall be taken *pro confesso* as to the insufficient matter, and an attachment may issue to compel a sufficient answer; *And provided, also*, That at any time before the hearing of the cause, the court may grant either party leave to amend his bill or answer, whether exceptions are taken or not.

Ib. Sec. 4.  
Exceptions, when to be filed.

To be heard and determined at the first term.  
Consequences of sustaining or overruling exceptions.

§ 38. It shall not be required to file a replication to an answer; and in all cases where the answer is filed ten days before the sitting of the court, or the bill is taken *pro confesso* for want of an answer, the cause shall be heard and determined at that term, if practicable, unless, on good cause shown, either party continue the same.

Ib. Sec. 5.  
Replication not required.  
Cause, when to be heard.

§ 39. Before a decree is pronounced on a bill taken *pro confesso*, the court shall be satisfied, by sufficient evidence, of the justice of the complainant's claim or demand; but in all cases, before the hearing of the cause, the defendant shall have leave to set aside the order *pro confesso*, by filing a full and complete answer; and where an

Ib. Sec. 6.  
Evidence of decree on bill taken *pro confesso*.  
Order *pro confesso* may be set aside.



and attachment may issue for want of an answer, or sufficient answer, or for not obeying the order, or performing the decree of the court, or for disobedience to its process, the defendant shall be discharged therefrom by a compliance at or before the next term.

*Ib. Sec. 7.* Judge shall render decree in writing.

*Ib. Sec. 8.* Answers, &c. before whom sworn to.

*Ib. Sec. 9.* *Ne exeat* may issue on equitable claim.

Dissolution of injunctions, &c.

*Ib. Sec. 10.* Court may refer matters of account to clerk.

Parties may appeal. Notice of appeal.

Parties allowed to swear to items not above \$10.

1805—(2)

*Sec. 1.*

Def't not appearing according to rules of court, and on affidavit of his absence from the state, &c. court may make an order for him to appear.

Order to be published, &c.

Def't failing to appear,

attachment may issue for want of an answer, or sufficient answer, or for not obeying the order, or performing the decree of the court, or for disobedience to its process, the defendant shall be discharged therefrom by a compliance at or before the next term.

§ 40. The presiding judge shall render his decree in writing, on or before the adjournment of the court, unless in weighty and difficult cases, in which he may be indulged to the ensuing term.

§ 41. All answers and bills for injunctions, and for writs of *ne exeat*, shall be sworn to before any clerk of a circuit court, judge, or justice of the peace.

§ 42. It shall be lawful to grant writs of *ne exeat*, not only in cases where a sum of money is due, but also where the complainant has an equitable claim or demand against the defendant: *Provided*, That all writs of injunction and *ne exeat* may be dissolved at the next term after they were granted, on good cause shown. (1)

§ 43. When it is necessary to the justice of the case to have a reference of matters of account, the court in its decree shall order the same to be referred to the clerk, to ascertain and report thereon, at or before the next term; and from which either party may appeal to the court, having given the opposite party ten days' notice thereof, with the grounds of appeal distinctly set forth, and if the party appealing does not prevail, he shall pay cost thereon; but if a decree cannot be given on the merits of the case, until matters of account between the parties are referred, then the same shall be referred and ascertained before the hearing, under such rules as the court may prescribe. In ascertaining and adjusting accounts, sums and items not exceeding ten dollars, each, shall be allowed on the party's oath, unless disproved by sufficient testimony; and sums and items above ten dollars, each, shall be proved by sufficient vouchers or evidence.

§ 44. If the defendant in any suit in equity, against whom subpoena or other process may issue, shall not cause an appearance to be entered, within such time and in such manner as, by the rules of the court, the same ought to have been entered, in case such subpoena or other process had been duly served, and affidavit being made, that such defendant resides beyond the limits of the state; or that, upon inquiry at his usual place of abode, he could not be found so as to be served with such process; and that there is just cause to believe that such defendant is gone out of the limits of the state, or otherwise absconded, to avoid being served with such subpoena or other process; then, in either case, the court may make an order, directing such defendant to appear at a certain day therein named; a copy of which order shall be published, within forty days thereafter, in some gazette regularly published in this state, for such space of time as the court shall direct, and shall, within the time aforesaid, be posted up at the door of the court-house where made; and said court may, at their discretion, direct such order to be published in any gazette in the United States, and for such space of time as they may deem reasonable; and if the defendant do not appear, within

(1) Writs of *ne exeat* may be properly granted in the following cases:—

1. Where the demand is exclusively equitable, whether a sum certain be due or not, and the defendant is about to remove beyond the jurisdiction of the court.

2. In aid of an action at law, where the courts of law and equity have concurrent jurisdiction, the defendant being about to remove, and bail not having been obtained.

3. Where the two courts have concurrent jurisdiction, and no action at law, but a suit in equity has been instituted. *Lucas v. Hickman*, 2 *Stewt. Rep.* 111.



the time limited by such order, or within such further time as the court shall appoint, then, on due proof of publication as aforesaid, the court may order the plaintiff's bill to be taken *pro confesso*, and make decree thereon, and carry such decree into full effect as in other cases: *Provided*, That proceedings in equity against absent defendants, and decrees made on such proceedings, shall be subject to the restrictions, limitations, and provisos, hereinafter mentioned.

§ 45. The complainant shall, before obtaining any decree by virtue of the foregoing section of this act, give good and sufficient security, in such sum as the court may direct, to abide such order, touching the restitution of the estate or effects to be affected by such decree, as the court may make concerning the same, on the appearance and petition of the defendant to have said cause re-heard; and if any decree shall be made in pursuance of this act, against a person residing beyond the limits of the state, at the time of pronouncing such decree, and such person shall, within two years after making the same, reside within the state, or become publicly visible therein, then such defendant shall be served with a copy of such decree in a reasonable time after such residence or public appearance shall be known to the complainant; and in case such defendant depart this life within two years after making such decree, and before the service of such copy, then, if the heir of such defendant shall have any real estate, whereof possession shall have been given to the complainant, and such heir may be found; or if such heir be a *feme covert*, infant, or person *non compos mentis*, the husband, or guardian of such heir, or if the personal estate of such defendant shall have been levied on, or possession thereof given to the complainant, then the executor or administrator, if any such there be, shall be served with a copy of such decree, within a reasonable time after the death of the defendant, and his heirs, executors, or administrators in this state shall be known to the complainant.

§ 46. If any person or persons, served with a copy of such decree, shall not, within twelve months thereafter, appear and petition to have the cause re-heard, such decree, made as aforesaid, shall stand absolutely confirmed against the person or persons served with a copy as aforesaid, his, her, or their heirs, executors, or administrators, and all persons claiming under him, her, or them, by virtue of any act done after the commencement of the suit.

§ 47. If any person served with a copy of such decree as aforesaid, shall within twelve months thereafter, or if any person not so served, shall, within three years after pronouncing such decree, appear and petition to be heard, touching the matter of such decree, and pay the costs of suit, such person or persons, his, her, or their representative, or any person claiming under him, her, or them, by virtue of any act done before the commencement of the suit, may be admitted to answer the bill, and such proceedings had, as if no decree had passed.

§ 48. If any person or persons, against whom such decree shall be made, his, her, or their heirs, executors, or administrators, shall not, within three years next after making such decree, appear and petition to have such cause re-heard, and pay costs of suit as aforesaid, such decree, made as aforesaid, shall stand absolutely confirmed against the defendant or defendants, his, her, or their heirs, executors, or administrators, and against all persons claiming or to claim by, from, or under him, her, or them, or any of them, by virtue of any act done or to be done subsequent to the commencement of such suit: *Provided*, That this act shall not be so construed as to

&c. and on proof of publication, bill may be taken *pro confesso*, and decree rendered. Proviso.

*Ib. Sec. 2.* Complainant to give security to abide such order as the court may make, on defendant's appearance. Non-resident def't appearing within two years after decree, to be served with copy thereof. If def't die within two years, his ex'rs or adm'rs, in certain cases, to be served with a copy in a reasonable time after they are known.

*Ib. Sec. 3.* Decree to stand confirmed, unless rehearing is petitioned for, within 12 months after notice.

*Ib. Sec. 4.* Such persons may, upon notice, within one year, or without notice, within 3 years, upon payment of costs, answer the bill and set aside the decree;

*Ib. Sec. 5.* or failing to do so, the decree to stand confirmed.



authorize proceedings against persons residing out of the state, unless the ground or cause of action, or the transaction on which the bill may be brought, took place within the state.

1841—(24)

Sec. 1.  
Chancellors  
to prepare &  
adopt a sys-  
tem of rules.

§ 49. The chancellors of this state shall prepare and adopt a system of rules, for the regulation and government of proceedings in the courts of chancery, and from time to time amend the same: *Provided*, That they be not repugnant to, or inconsistent with, the laws of the land; *And provided*, They are approved of by the judges of the supreme court.

Ib. Sec. 2.  
All testimo-  
ny to be tak-  
en on inter-  
rogatories.

§ 50. All testimony, in chancery, shall be taken on interrogatories and cross interrogatories, which interrogatories and cross interrogatories shall be filed with the register, and issue from his office with the commission.

Ib. Sec. 3.  
Register's  
bond to be  
filed with  
sec'y of state

§ 51. The registers in chancery, after having their official bonds recorded in the clerk's office of the county court, of the county where the court of chancery may be held, shall lodge the same in the office of secretary of state, on pain of being removed from office by the chancellor of the proper division.

Ib. Sec. 4.  
Registers  
may be re-  
moved from  
office.

§ 52. The chancellors are hereby vested with power, each in their respective divisions, to remove from office any of their registers for misbehavior, malpractice, or any negligence in the duties of office, and to require of them new bonds, whenever they may deem it necessary.

Ib. Sec. 5.  
Chancellor  
may order  
process of  
attachment.

§ 53. For disobedience to any order or decree of the chancellor, and on a sufficient showing by affidavit, the chancellor may order process of attachment to issue, to bring the party before him, either in vacation or term time, (as the case may be,) to show cause why he should not stand committed.

Ib. Sec. 6.  
When in-  
junction is  
dissolved,  
register to  
certify the  
same, with  
transcript of  
bond, to  
court of law.

§ 54. Whenever an injunction is ordered to be dissolved, either with or without the six per cent. damage, and the injunction bond is ordered to have the force and effect of a judgment, it shall be the duty of the register, to certify the same, together with the transcript of the bond, to the court of law; to the end, that the plaintiff at law, may have execution on the injunction bond, as well as for the six per cent.<sup>a</sup> damage, if any be awarded.

a Sec. 76.  
Ib. Sec. 7.  
Register may  
hear excep-  
tions to bills,  
&c.

§ 55. Exceptions to bills, answers, and reports, shall be heard and determined by the register in the first instance, but subject to an appeal to the chancellor.

Ib. Sec. 8.  
Issue at law,  
how tried.

§ 56. Whenever the chancellors shall direct a feigned issue to be tried by a jury at law, the issue shall be made upon a supposed wager, as heretofore, and shall be tried in the circuit court of the county in which the court of chancery may be held.

Ib. Sec. 9.  
Title to pro-  
perty to vest  
by decree,  
without deed  
—but decree  
must be re-  
corded as  
deeds are.

§ 57. In all cases where the right and title to property, whether real or personal, shall be decreed to either of the parties, the decree itself shall vest the right and title in the party to whom it is decreed, and a deed of conveyance shall not be required to complete the title: *Provided*, That all such decrees, vesting title to real estate, shall be recorded in the office of the clerk of the county court of the county in which such real estate shall lie, under the same laws of registration as are applicable to deeds and conveyances of lands.

Ib. Sec. 10.  
Not to an-  
swer is to  
confess alle-  
gations of  
bill, except  
as to infants,  
&c.

§ 58. When service of a bill shall be made personally on the defendant, and the defendant shall refuse or fail to answer the allegations in the bill, the same shall be thereby admitted, and the chancellor shall give the same order or decree thereon, as if answer had been filed confessing the same, except in cases of infant defendants, *femes covert*, idiots, or lunatics, and cases of divorce.

Ib. Sec. 11.  
Receiver not  
appointed in  
vacation.

§ 59. It shall not be lawful to appoint a receiver in vacation.



§ 60. No special motion or application shall be heard or granted in vacation, unless on proof that the opposite party, his or her agent or attorney, if residing within the limits of the state, has had reasonable notice, except applications for writs of injunction and *ne exeat*, which may be made at any time, and without notice, as heretofore.

*Ib. Sec. 12.*  
No special motion in vacation, without notice, except, &c.

§ 61. The registers in chancery shall have power to order bills to be taken as confessed, for the want of answers, in vacation, and to grant orders, in vacation, requiring publication to be made against non-resident defendants.

*Ib. Sec. 13.*  
Register may enter decrees *pro confesso*, in vacation, and grant orders of publication.

§ 62. Guardians *ad litem* to minor defendants, residing within the state, may be appointed, if the minor be fourteen years of age, with the written consent of the minor and guardian, certified by a justice of the peace; if minor defendants be under fourteen years of age, residing within the state, then the court may appoint any suitable person who will consent to act as guardian *ad litem*; and if minors reside out of the state, of whatever age, publication shall be made as in other cases, and on proof of publication, the court may appoint a suitable person guardian *ad litem*.

*Ib. Sec. 14.*  
Guardians *ad litem* to minors, how appointed.

§ 63. In cases in equity, where property in litigation is liable to be wasted, carried out of the jurisdiction of the court, or otherwise disposed of, it shall be lawful for the chancellor or any circuit judge, in vacation or in term time, to order process to issue, requiring the sheriff to take possession of said property, until the defendant, his agent or attorney in fact, give bond, with good security, to have said property forthcoming, and to abide and perform the further order and decree of the court, and if the defendant do not so give bond with security, within ten days, then it shall be lawful for the sheriff to deliver possession of the property to the complainant on his giving the like bond: *Provided*, That before any such process shall be ordered, the complainant, his agent or attorney in fact, shall make oath that the defendant is wasting or disposing of the property, or carrying it out of the state, or threatens to do so; *And provided*, also, That the complainant, his agent or attorney in fact, give bond, with good security, to indemnify the defendant for all costs and damages he may wrongfully sustain; *And provided*, The case presented by the bill, in other respects, will warrant the interference of a court of equity.

*Ib. Sec. 15.*  
Chancellor, or any circuit judge, may require sheriff to take possession of property liable to be wasted or carried out of the state.

Provisos.

§ 64. When an appeal or writ of error is taken to the supreme court, from the decree of a chancellor, all further proceedings on said decree shall be thereby suspended: *Provided*, The appellant or plaintiff in error, give bond with security, as in cases of error to the courts of law.

*Ib. Sec. 16.*  
Proceedings suspended by appeal, &c., from decree. Proviso.

§ 65. Unless exceptions have been filed to the report of the master, the same shall be confirmed by the court after two days' notice.

*Ib. Sec. 17.*  
Master's report when confirmed.

§ 66. Where it shall appear to the chancellor, either by inspection or other proof, that a party, either complainant or defendant, is an idiot, or lunatic, or from imbecility of mind is incapable of managing his affairs, it shall be lawful for the chancellor to appoint a guardian *ad litem*, though the party may not have been found an idiot or lunatic by a regular commission or inquisition of lunacy.

*Ib. Sec. 18.*  
Chancellor may appoint guardian *ad litem*, for idiot, &c.

§ 67. No *feme covert* shall file a bill for a divorce or other matter, otherwise than by her next friend, except in cases where her husband has joined with her in the bill.

*Ib. Sec. 19.*  
*Feme covert* to file bill, how.

§ 68. The chancellors shall not be required to alternate, but may hold courts for each other, at their option, and so much of the act

*Ib. Sec. 20.*  
Chancellors need not al-



temate, but may hold courts for each other. 1841—(35)  
*Sec. 1.*  
 Tax of \$2 to be paid to register.

establishing separate courts of chancery, as requires the chancellors to alternate, is hereby repealed.

§ 69. The tax of two dollars, now required by law to be taxed in the bill of costs, on all suits in chancery, and to be assessed and collected at the same time, and in the same manner as other costs of suits, shall be paid over to the respective registers of the chancery courts, in which such suits may be instituted, instead of into the county treasury, as now required by law.

*Ib. Sec. 2.*  
 Fund arising from said tax how applied.

§ 70. Of the money thus collected, there shall be paid to the sheriffs of the several counties in which chancery courts may be holden, one dollar in each case, as his compensation for attending on said courts whilst in session, and the balance of said costs shall be applied, under the direction of the chancellors holding such courts, to the procurement of such books and stationery, as may be needed by the registers thereof.

1841—(26)

*Sec. 1.*  
 Extra terms may be held in Clayton & Montgomery

§ 71. The chancellor of the southern division, or any other chancellor in this state, is hereby authorized to hold extra terms of the chancery court, at Clayton, in Barbour county, and at Montgomery, in Montgomery county, at such time as he may appoint: and he shall cause thirty days' previous notice thereof to be given by advertisement in some paper published in Irwinton or in the town of Montgomery: and subpoena to answer, or other chancery process, may be returnable to such extra terms, under the same rules and regulations, and with the same jurisdiction in the court, as though it were a regular term.

*Ib. Sec. 2.*  
 Extra terms of any chancery court may be holden, when.

§ 72. Whenever it happens that a regular term of any chancery court, for any chancery district in this state, is not holden, or all the business of any such regular term is not disposed of, an extra term may be holden by such officer, and on such notice as in first section; and like process may be returnable to such extra term, with like jurisdiction in the court, as in section first is provided for the extra terms in said first section specified: *Provided*, That notice may be published in the nearest newspaper.

### 3. CHANGE OF VENUE.

1832—(37)

*Sec. 1.*  
 Venue may be changed where judge has been counsel, or is connected with either party.

§ 73. It shall be lawful for any plaintiff or defendant in any suit in chancery, in any of the circuit courts in this state, to change the venue of such suit in chancery, where it shall appear to the court, that the judge of the circuit, in which such suit in chancery is pending, has, at any time previous to his appointment as judge, been employed in the suit so pending, by either plaintiff or defendant, as counsel in the said suit; or where it shall appear to the court, that the judge of the circuit is connected to the parties interested in such suit by affinity or consanguinity.

*Ib. Sec. 2.*  
 To be changed to circuit, not liable to the same exceptions, and clerk to transmit full transcript, &c.

§ 74. When a change of venue, under the provisions of this act, shall be allowed for the reasons above set forth, the judge of the circuit, where such suit is pending, shall, on application, change the venue thereof to an adjoining circuit free from the like exceptions; and the clerk of the circuit court, where such suit was instituted, shall transmit without delay, to the clerk of the circuit court to which such suit may be changed, a full transcript of all orders, motions, and records, entered on his books in relation to the suit so pending, with all the original papers and proceedings in the case; and all bonds and recognizances, and all other matters in relation to the cause in controversy, shall be as valid, to all intents and purposes,

All bonds, &c. valid.



as they would have been, had such change of venue not been made ; and the suit, so changed, shall be placed in the same situation in the court to which it shall be changed, as if the same had been instituted in said court.

§ 75. The decrees, orders, and other proceedings in the case, shall be as binding on the parties concerned in such suit, as if the same had been determined in the court where the suit originated, in every respect whatever.

*1b. Sec. 3.*  
Decrees, &c.  
to be binding

#### 4. INJUNCTIONS.

§ 76. No injunction shall be granted to stay an execution of a judgment at law, unless the party, applying for such injunction, to be benefited thereby, shall first sign and seal a release of errors in such judgment at law, and file the same in the office of the clerk of the court, in which such judgment shall have been obtained ; and whenever an injunction shall be dissolved, damages after the rate of six per centum shall be added to the amount of the judgment : *Provided*, The court be of opinion that the injunction was obtained for delay.

*1816—(10)*  
*Sec. 1.*  
Party apply-  
ing for in-  
junction to  
file release of  
errors at law

Damages on  
dissolution  
of injunction

§ 77. Where any bill of injunction may be dissolved, on an interlocutory order of the courts exercising chancery jurisdiction, and said bill after such interlocutory order of dissolution, shall be set for a hearing, it shall be the duty of the court, before whom such order of dissolution may be made, to require of the defendant or defendants to such bill of injunction, bond and security, payable to the complainant or complainants, in double the amount of the sum enjoined on the judgment at law, conditioned to refund the money, interest and costs, to the complainant or complainants, in the event of said judgment at law being perpetually enjoined, on the final hearing of said bill of injunction.

*1823—(12)*  
*Sec. 1.*  
Def'ts to  
bills of in-  
junction re-  
quired to  
give refund-  
ing bond on  
their disso-  
lution;

§ 78. The bond and security taken as aforesaid, in the event of said bill of injunction being perpetuated on the final hearing, shall have the force and effect of a judgment, and execution may issue thereon against the principal and security, as on forthcoming bonds for the delivery of property on the day of sale : except that the decree shall be conclusive evidence of a forfeiture of any such bond ; and an endorsement on said bond, that the same is forfeited, shall not be necessary.

*1b. Sec. 2.*  
which bond  
shall have  
the force of a  
judgment, if  
the injunction  
is made  
perpetual.

§ 79. Every bond, executed for the purpose of obtaining an injunction, shall, on the dissolution of the said injunction, have the force and effect of a judgment ; and it shall be lawful for the party or parties, whose judgment may have been enjoined, to take out execution against all the obligors in the bond, for the amount of the judgment which shall have been enjoined, together with lawful interest thereon, and also the costs incurred in and about the said chancery proceedings.

*1826—(22)*  
*Sec. 1.*  
All bonds  
given to ob-  
tain injunc-  
tions, to  
have the  
force of judg-  
ments on  
their dissolu-  
tion.

§ 80. Whenever any order shall be entered by a chancellor, dissolving an injunction, it shall be lawful for the complainant to take an appeal from such order of dissolution to the supreme court ; and whenever such appeal shall be taken to the supreme court, from the order dissolving such injunction, it shall be heard and determined at the next term of the supreme court, in all cases whatsoever.

*1836—(21)*  
*Sec. 1.*  
Complainant  
may appeal  
from an or-  
der dissolv-  
ing an in-  
junction.

§ 81. It shall not be lawful for registers in chancery to grant or dissolve injunctions.

*1843—(32)*  
*Sec. 1.*  
Registers not  
to grant or  
dissolve in-  
junctions.



*Ib. Sec. 2.*  
Chancellor  
may dissolve  
injunctions  
in vacation.

§ 82. It shall be lawful when an injunction has been granted, for the defendant or defendants, in vacation, after having filed an answer, to present to the chancellor, within whose division the bill may be pending, a copy of the bill and answer or answers, and to apply for a dissolution of the injunction, who shall act on such application, in the same manner as now prescribed by law on similar applications in court: *Provided*, That ten days' notice be given of such intended application, which notice may be given either to the complainant or his solicitor.

## JUDICIAL PROCEEDINGS—BY JUSTICES OF THE PEACE.

### 1. JUSTICES' JURISDICTION.

1814—(17)  
Justices to  
have juris-  
diction of  
sums not ex-  
ceeding fifty  
dollars.

May issue  
warrant.

§ 1. ALL debts and demands, not exceeding fifty dollars, for a sum or balance due on any specialty, note, bond, cotton receipt, contract, or agreement in writing, or for goods, wares and merchandise, sold and delivered, or for work or labor done, or for money lent, or for specific articles, or for any sum or balance due either by written or verbal contract, or *assumpsit* in any case not sounding in damages merely, are hereby declared to be exclusively cognizable and determinable by a justice of the peace. Any such justice is hereby authorized, on complaint made to him, to issue his warrant, *capias*, summons, or attachment, as the case may require, returnable at a certain time and place therein mentioned, not less than ten nor more than thirty days from the time of issuing the same; and, on return thereof, proceed to hear and determine the case on the merits, if the parties appear; give judgment by default, if the defendant fail to appear and contest the plaintiff's demand; or enter judgment of non-suit against the plaintiff, if he fail to appear and prosecute his claim; and issue execution, against the person or goods and chattels of the party against whom judgment is so entered, for the debt and costs, or costs alone, (as the case may require,) returnable at a certain time and place therein mentioned, not less than twenty, nor more than thirty days from the time of issuing the same; but such justice may, by consent of the parties, or on good cause shown by oath or affidavit, adjourn the trial of any cause to any time not exceeding ten days.

1827—(36)  
Sec. 1.  
To have ju-  
risdiction of  
contracts for  
the payment  
of specific ar-  
ticles, &c.,  
not exceed-  
ing \$50.  
1841—(27)  
Sec. 1.  
One justice  
to have juris-

§ 2. All contracts for the payment of specific articles, or for the performance of services, when the value of the article contracted for, or of the services to be performed, does not exceed fifty dollars, shall be cognizable and determinable by justices of the peace, subject to the same rules and regulations as are now provided by law, for the trial of causes before justices of the peace. (1)

§ 3. Any one justice of the peace shall have jurisdiction in all cases of damages, whether the same arose from matter of contract,

(1) Justices of the peace have jurisdiction for the recovery of the value of specific articles bailed and not re-delivered according to promise. *Spann v. Boyd*, 2 *Stewt. Rep.* 480. Where more than \$50 is due on a contract, the creditor may relinquish all over that amount, and sue for \$50 in a justice's court. *King v. Dougherty*, 2 *Stewt. Rep.* 487.



or any kind of tort or wrong done whatever, (except actions of slander,) where the damages, claimed by the plaintiff, do not exceed twenty dollars: *Provided*, That either party shall have the right to an appeal from the judgment of the justice to the next superior court of the county.

## 2. PROCESS.

§ 4. All process issued by a justice of the peace, shall name the time and place of trial, and shall be served five days<sup>1</sup> previously thereto; and any such justices, respectively, shall issue all summonses for witnesses, and compel their attendance, under a penalty not exceeding ten dollars; and the constable shall endorse on the back of all process how he has executed the same.

§ 5. All warrants, or other precepts, issued by any justice of the peace, shall be under the hand and seal of such justice, and shall be directed to the officer whose duty it is to execute the same; and the justices shall cause fair entries to be made, in books to be by them provided for that purpose, of the names of the plaintiff and defendant, in any suit brought before them, with the debt and costs adjudged, and the time when the warrant issued, was made returnable, and when judgment was given, together with the return made upon all such process. (1)

§ 6. Every warrant, attachment, summons, subpœna, or other process, issued by a justice of the peace, shall be returnable at a day certain, giving a reasonable time for attendance;<sup>2</sup> and if any witness, duly summoned, fail to appear agreeably to the command of such summons or subpœna, he or she so failing shall be called out on such summons or subpœna, and forfeit the sum of ten dollars with costs, for the use of the county, and for which the justice shall immediately enter judgment by default against said witness, to be made final in case said witness do not attend within ten days after notice served on said witness, of such judgment by default, and after the rendition of such judgment, and show cause to the satisfaction of said justice, on oath or affidavit, for such default.

§ 7. It shall not be necessary for justices of the peace, to annex a copy of the note or account to any warrant, summons, or *capias*, but to endorse thereon the cause of action.

§ 8. It shall not be lawful for any sheriff or coroner, to execute process in civil cases, issued by any justice of the peace, except attachments, "*and precepts of forcible entry and detainer*," and where any civil process, issued by any justice of the peace, is executed by any sheriff or coroner, (except as aforesaid,) the same shall be null and void, and of no effect.—No judgment thereon shall be rendered, any law to the contrary notwithstanding.

§ 9. Every process, issued by a justice of the peace, whereby any person or persons are required to answer before such justice, for any debt or debts which he, she, or they may owe, shall be returnable

1814—(7)  
Sec. 5.  
Process to name time & place of trial. When executed.

Summonses for witnesses  
Constable's return.

1814—(17)  
Sec. 2.

To be under hand & seal of justice.

Justices to make entries of their proceedings, &c.

To Sec. 14.  
Process to be returnable on a day certain, giving reasonable time.

Judgment by default against witnesses, to be made final after ten days' notice.

1816—(1)  
Sec. 3.  
Cause of action to be endorsed on warrant.

1823—(30)  
Sec. 2.

[a 1826—(13)  
Sec. 2.]

Process not to be served by sheriff or coroner, except, &c.

1830—(21)  
Sec. 1.

To be returnable to some

<sup>1</sup> But see § 6.

<sup>2</sup> Warrants, issued for the breach of any by-law of an incorporated town, may be made returnable forthwith. See "Incorporated Towns."

(1) Proceedings before justices (except on writ of forcible entry, &c.) are not records. *Gayle v. Turner*, *Min. Rep.* 204.



place in the beat where def't resides or debt was contracted, or if justice be incompetent, to some adjoining beat.

Process, not so returnable, void, on motion and proof.

Subpoenas to issue as formerly.

to some place either in the beat where the defendant or defendants reside, or in the beat where the debt or debts were contracted; and if there should be no justice in the beat where the defendant or defendants reside, or the justice, from interest or other legal objection, is incompetent to try the cause, then the process may be returnable to some place in any adjoining beat; and if there should be several defendants, the process may be returnable to some place in any beat, in which one of them may reside; and every process, issued contrary to the provisions of this act, shall be void, on motion and proof made by the defendant or defendants thereof, to the satisfaction of the justice trying such cause; and in every case, by appeal in the circuit or county court, the process shall be adjudged void, on plea of the defendant or defendants, provided that subpoenas for witnesses shall issue as heretofore: *Provided*, That nothing, in this act contained, shall have force or effect in the county of Mobile.

### 3. BAIL.

1814—(17)  
Sec. 13.  
Bail bond may be taken.

Bail, how made liable.

Defendant, unable to give bail, or surrendered by his bail, to be committed to jail.

§ 10. In case it becomes necessary to issue a *capias*, the officer arresting any person by virtue thereof, may take a bail bond of the defendant, with security in double the amount of the debt, payable to the plaintiff, conditioned for his or her appearance on the day of trial; and in case he or she fail to appear, judgment shall be entered against him or her; but judgment shall not be entered against the bail, until an execution against the defendant shall have been returned by the officer, that the defendant is not found within his county, and until notice shall have been served on such bail, requiring him or her to bring in the body of the principal: but in case the defendant cannot give bail, or in case the bail surrender him or her before the day of trial, he or she shall be committed to the jail of the county, until he or she satisfy the demand against him or her, or be otherwise discharged by law.

### 4. TRIAL AND JUDGMENT.

1814—(17)  
Sec. 4.  
Justice to issue subpoenas for witnesses in the county, or commission to take depositions out of the county.

On appeal taken, justice to issue subpoenas returnable to court.

*Ib.* Sec. 10.  
Parties may be examined on oath, if amount does not exceed 20 dollars.

§ 11. The justice, before whom any cause is depending, shall issue all subpoenas for witnesses who reside within his county, which the parties or either of them require; and in case any witness reside without the limits of his county, such justice may—on satisfactory evidence shown him, that sufficient and reasonable notice has been given to the adverse party, of the time and place of taking his or her deposition—issue a commission to some justice of the peace, where such witness resides, to take his or her deposition, which deposition, so taken and returned under the hand and seal of such justice, shall be read in evidence; and the justice, from whose judgment any appeal is taken, shall issue all subpoenas for witnesses, which either of the parties may require, returnable to the next superior court after such appeal is taken.

§ 12. If the sum claimed be twenty dollars or under, the justice of the peace may, at the trial of the cause, proceed to examine plaintiff and defendant on oath, and give judgment as to him the right of the cause may appear; and in all cases where the sum of money claimed exceeds twenty dollars, the oath of neither party



shall be admitted, but the same evidence shall be required by every justice of the peace, as is required in the superior court.<sup>1</sup>

§ 13. When any justice of the peace dies, resigns, or removes from the county, or is removed from office, his papers shall be transferred to the nearest justice to his place of residence, who shall finish the business of said justice, in the same manner as business originally commenced by him.

§ 14. In any trial before a justice of the peace, in civil cases, when the defendant's off-set is satisfactorily proven to be greater than the plaintiff's claim, the justice shall give judgment in favor of the defendant for the overplus, provided it does not exceed fifty dollars. And if the overplus should exceed fifty dollars, then the justice shall give judgment in favor of the defendant for costs: *Provided*, The defendant will enter a credit on his claim, for the amount of the plaintiff's demand, or give the plaintiff a receipt for so much; *And provided, further*, That no claim shall be allowed as a set-off, unless it belonged to the defendant at the time he was sued.

§ 15. Whenever any suit, brought before a justice of the peace, has been finally decided on its merits by such justice, it shall be a bar to a recovery for the same cause of action brought before any other justice of the peace; and all justices of the peace, before whom any trial shall have been had as aforesaid, shall,—on application of either of the parties, or their legal representatives, or any other person in his, her, or their behalf,—grant a transcript of the record of such judgment in favor of such party, which shall be sufficient evidence to bar any recovery before any other justice of the peace as aforesaid, for the same cause of action.

### 5. EXECUTION.

§ 16. When any judgment is rendered by any justice of the peace, he shall, if the applicants give bond and security in double the amount of such judgment, including interest and costs, for the payment of the same, at the expiration of the stay given by law, give a stay of execution, "*on all sums not exceeding twenty dollars, thirty days, and on all sums over that amount, sixty days*"; and in case the money be not paid at the expiration of such stay, execution shall issue against the principal and security, or either of them, for the principal, interest, and costs, due on such judgment; and such judgments, and all other judgments rendered by justices, shall bear legal interest from the time of their rendition until paid; and all executions and summonses for garnishees in attachment shall issue to the county where such principal, security, or garnishee may reside, and shall be duly executed and returned, by any sheriff, coroner, or constable of the county to which the same is sent.

§ 17. In order to give either party an opportunity to appeal, no execution shall issue on the judgment of any justice, until five days after rendering such judgment, unless the plaintiff, his or her agent or attorney, will make oath, that he or she has just reason to believe that the plaintiff will be in danger of losing his or her demand by

<sup>1</sup> Oath of the plaintiff may now be received in all cases not exceeding \$100, unless controverted by oath of defendant.—See "Judicial Proceedings at Common Law," § 161.



such delay, in which case execution shall issue immediately; but shall not deprive him or her of the right of appeal within the time prescribed by law.

NOTE.—See this title—§ 1: also the several divisions of the title—"Executions." When justices are allowed to issue against the successful party for his own costs, see "Judicial Proceedings at Common Law,"—§ 23.

## 6. MOTIONS AGAINST JUSTICES.

1829—(14)  
Sec. 6.  
Justice defaulting may be moved against before any other justice.

If amount exceed fifty dollars, remedy by motion in the circuit or county court.

§ 18. Any justice of the peace in this state, who shall fail or refuse to pay, on application, any moneys received or collected by virtue of his office, to the plaintiff, his or her agent, or attorney, shall be liable to have a judgment entered against him upon motion before any other justice of the peace, of the county in which such defaulting justice may reside, for the debt and interest so received or collected, with ten per cent. a month damages thereon, a written notice of such motion having been given to such defaulting justice three days previous to the trial of the motion, provided the amount of the judgment so rendered shall not exceed fifty dollars; and in all cases where the amount exceeds that sum, the same remedy shall be had before the county or circuit courts, with damages thereon as aforesaid.

## JURORS AND JURY.

Con. Ala.  
Art. 1.  
Sec. 28.  
1807—(33)  
Sec. 2.  
Who disqualified as jurors.

1820—(23)  
Sec. 12.  
[a 1823—(32)  
Sec. 5.]  
Jurors' compensation, \$1 per day.

[b 1815—(5)  
Sec. 1.]

How paid.

c Sec "Tax-  
es," § 74.  
Acts consoli-  
dated.  
1836—(22)  
1837—(15)  
1839—(26)  
Compensation in cer-  
tain coun-  
ties, \$1.50  
per day.

In certain

§ 1. THE right of trial by jury shall remain inviolate.

§ 2. No person under the age of twenty-one years, or above the age of sixty, nor any person continually sick, or who may be diseased at the time of the summons, nor any person who has been convicted of any felony, perjury, forgery, cheat, or conspiracy, or offence, shall be summoned on a jury.

§ 3. Each grand juror, and juror of the original pannel shall be entitled to receive *one dollar per day, for each day's attendance at said courts; and four cents per mile in going to, and returning from said courts, and ferriages:* which shall be paid out of any moneys in the county treasury, on the certificate of the clerk of his having served as such, <sup>b</sup>in which shall be stated the number of days which such person attended as a juror, and the sum to which he is entitled, which certificate the clerk of said court is hereby required to issue accordingly:—and in case there should not be funds in the county treasury for the payment of such demands, the certificate of such juror shall be receivable by the collector of taxes for county purposes, in their respective counties.<sup>c</sup>

§ 4. The jurors for the counties of Wilcox, Madison, Jackson, Benton, Morgan, Limestone, Lauderdale, Franklin, Pickens, Autauga, Coosa, Talladega, Macon, Washington, Fayette, Randolph, Russell, Marion and Bibb, who may be drawn and serve on the regular pannel of grand or petit jurors, shall be entitled to receive as compensation for their services one dollar and fifty cents per day, instead of the per diem pay which is now allowed by law.

§ 5. The grand and petit jurors of the counties of Greene, Sumter, Lowndes, Baldwin, Marengo, Tuskaloosa, Tallapoosa, Perry,



Montgomery, Monroe and Dallas shall receive the sum of two dollars other counties, \$2 per day, and those of the county of Mobile two dollars and fifty cents per day, for every day they shall attend and serve as jurors at said courts, in place of the per diem now allowed by law to jurors, in said counties, to be paid as now provided by law.<sup>1</sup>

§ 6. When the validity of any will shall be contested in any county court, it shall be the duty of the judge of said court, at the request of either party, to cause fifteen jurors to be drawn and summoned for the trial of such contest in the same manner that jurors are drawn and summoned for the circuit courts; and if, out of the number so drawn and summoned, a sufficient number shall not appear, or if by challenges a sufficient number should not be left to form a jury, the sheriff shall be directed to summon, *instantly*, a sufficient number from the by-standers.

§ 7. The jurors, drawn and summoned under this act, shall each be entitled to the sum of seventy-five cents per day for every day they may attend, to be paid by the successful party, before the verdict shall be recorded: and to be afterwards taxed in the bill of costs, and collected as the other costs.

## JUSTICES OF THE PEACE, AND CONSTABLES.

§ 1. A COMPETENT number of justices of the peace shall be appointed in and for each county, in such mode, and for such term of office, as the general assembly may direct. Their jurisdiction in civil cases shall be limited to causes in which the amount in controversy shall not exceed fifty dollars. And in all cases tried by a justice of the peace, right of appeal shall be secured, under such rules and regulations as may be prescribed by law.

§ 2. There shall be elected by the qualified electors within the limits of each captain's company in the several counties in this state, two justices of the peace and one constable, who shall hold their offices for and during the term of three years from the time of such election, and until their successors shall be duly qualified:—which elections shall be holden by the commanding officer of each company, and two freeholders or householders as he may appoint, on the first Monday of March next. And it shall be the duty of the persons superintending the elections as aforesaid, to make return of the persons elected, to the clerk of the county court, stating how the vacancy occurred, if to fill a vacancy, or that the appointment is an original one, and the clerk shall certify the same to the governor for commissions.

§ 3. It shall be the duty of each commanding officer, at the expiration of every term of three years from the first day of March next, to hold an election for two justices of the peace and one constable, as prescribed in the first section of this act.

§ 4. It shall be the duty of each commanding officer, whenever any vacancy occurs in his company, by death, resignation, or otherwise, in the office of justice of the peace or constable, immediately to

<sup>1</sup> The above section, and the one preceding, though not *general*, applied to so large a number of counties, on a subject of such interest to each of them, that it was thought proper to insert them in a consolidated form.



days' notice,  
and hold  
election.

[a1827—(9)  
Sec. 2.]  
Election for  
residue of  
official term.  
[b1833—(18)  
Sec. 1.]  
Penalty  
against cap-  
tain for neg-  
lect to hold  
election.

1820—(3)  
Sec. 1.  
Justice or  
constable,  
exercising  
his office  
after remo-  
val from the  
beat, subject  
to penalty of  
forty dollars.

Not to apply  
to justices  
and const-  
ables of Mo-  
bile.

1807—(3)  
Sec. 2.  
In case of va-  
cancy, jus-  
tice may ap-  
point a con-  
stable till  
filled.  
Ib. Sec. 3.  
Duties of  
constable.

How made  
liable for  
defaults.

Ib. Sec. 18.  
Justice, on  
emergencies,  
may depute  
person to ex-  
ecute pro-  
cess.  
1819—(14)  
Sec. 3.  
Constable to  
give bond.

notify his company of the same, and call them together by advertise-  
ment, giving ten days' notice, for the purpose of holding an election  
to fill such vacancy; which election shall be holden by the command-  
ing officer aforesaid, and two freeholders or householders, as he may  
appoint; and the person elected shall hold his office for the residue  
of the time for which his predecessor was elected; and if any cap-  
tain, or commanding officer, shall fail or neglect, for the space of one  
month, to cause the said election to be held, as required in this and  
the preceding section, he shall be liable to a penalty of twenty dollars,  
to be recovered before any justice of the peace of the county, by any  
one who will sue for the same; which penalty may, in like manner,  
be recovered against him, at the expiration of each period of one  
month, computing from the first recovery, so long as an election for  
justice of the peace or constable shall be deferred by his neglect.

§ 5. If any person, who may have been, or may hereafter be elect-  
ed to the office of justice of the peace or constable, for any county in  
this state, and may thereafter move out of the captain's beat in which  
he may have been elected, after such removal, shall discharge any  
act or duty pertaining or belonging to any such office, by reason, or  
under pretence of color or right to act in said office, by reason of  
having been so elected as aforesaid, such person, so offending against  
the provisions of this act, shall forfeit and pay the sum of forty dol-  
lars, for every act so illegally done and performed by him, to be  
recovered by action of debt, before any justice of the peace of the  
proper county; one moiety to the use of the party aggrieved, and  
the other to the use of the poor of the proper county, with costs of  
suit: *Provided*, That the provisions of this act shall not be con-  
strued to apply to justices of the peace and constables of the city  
of Mobile, who leave the city during the summer months for their  
health.

§ 6. Any justice of the peace may, in cases where there is no  
constable in his district, either from death, removal, or otherwise,  
authorize some person to execute the duties of constable until such  
vacancy is filled.

§ 7. It shall be the duty of the constables of the several counties  
to serve all warrants, summonses, executions, and other process to  
them directed by lawful authority, agreeably to the tenor thereof,  
and make due returns of the same: and if any constable shall fail to  
execute and make return, or to pay to, or account with any person  
for whom he may have received money, or to return the same to the  
justice issuing the warrant or execution, within ten days after the  
receipt thereof, the person, so injured as aforesaid, may, upon appli-  
cation to any justice within the district, obtain a warrant against  
him; and such justice shall, upon proof thereof, award judgment  
and execution for the same, and all costs against such constables, and  
also fine him for such abuse, in a sum not exceeding ten per cent-  
on the amount so withheld; and in case of neglect or refusal to  
serve and return any warrant or summons as aforesaid, may fine the  
constable so offending in a sum not exceeding the sum due by the  
defendant.

§ 8. In case of emergency, any justice may authorize some repu-  
table person to execute a process, although not commissioned as  
aforesaid, and without giving bond and security.

§ 9. It shall be the duty of the constables, elected in the several  
counties in this state, before they enter on the discharge of the duties  
of their office, to enter into bond, with sufficient security, to be ap-  
proved of by the judges of the county courts, respectively, payable



to the governor for the time being, and his successors in office, in the sum of one thousand dollars, for the faithful performance of the duties of their office; and every constable, failing to give bond as herein directed, shall forfeit and pay, for every act he shall perform as constable, the sum of fifty dollars, to be recovered before any court of competent jurisdiction, one half to the use of the person who may sue for the same, and the other half to the use of the county in which he may be so elected.<sup>1</sup>

§ 10. Whenever any vacancy may occur in the office of justice of the peace or constable, in any company beat when there is no commanding officer of the company in such beat, it shall be the duty of the sheriff of the county, in which such beat may be, or the coroner, in case of vacancy in the office of sheriff, on being informed, by any person residing in such beat, of such vacancy, and that there is no commanding officer of the company in said beat, immediately to notify the company in said beat, of such vacancy, and call them together by advertisement, giving ten days' notice of the time and place, for the purpose of holding an election, to fill such vacancy; which election shall be held by the said sheriff and two householders or freeholders, as he may appoint, and the said sheriff, so holding any such election, shall return the same as now required, by law, of the commanding officer of the company in any beat.

§ 11. If any sheriff shall fail or neglect, for the space of one month, to cause an election to be held under the provisions of this act, after being informed of the existence of any vacancy in the office of the justice of the peace or constable in any company beat, and that there is no commanding officer of the company in such beat, he shall be liable to a fine of thirty dollars, to be recovered before any justice of the peace of the proper county, to be paid into the county treasury.

§ 12. The counties of Henry, Dale, Covington, Shelby, Lauderdale, Limestone, Jefferson, Walker, Lowndes, Coosa, Bibb, Fayette, and St. Clair, are hereby exempted from the operation of this law.

§ 13. All justices of the peace, elected in the several counties in this state, before they enter on the discharge of the duties of their office, shall give bond, with two or more sufficient securities, to be approved by the judges of the county courts, respectively, payable to the governor for the time being, and his successors in office, in the sum of one thousand dollars, for the faithful performance of the duties of their office, and that they will pay over all money that may come into their hands to the person or persons entitled to the same; which bond shall be deposited in the clerk's office of their respective counties.

§ 14. They shall be required to keep their offices within the beats from which they are chosen, respectively.

§ 15. The judges of the county courts, respectively, are hereby empowered to require the justices aforesaid, to renew their bonds, whenever they may be deemed insufficient, either as to solvency or amount, for the public security, on giving said justice of the peace fifteen days' notice, and if he shall fail to renew his bond, as contemplated by this act, the said judge shall forthwith declare his office

<sup>1</sup> The duties imposed on constables by this act, and not included under this title, will be found under the heads of "Executions," and "Judicial Proceedings by Justices—Bail."



vacant, which shall be filled in the same manner as now prescribed by law.

1834—(17)

Sec. 1.  
Constables  
and their se-  
curities lia-  
ble to judg-  
ment, on mo-  
tion before  
justice, for  
failing to  
make money  
on execution

§ 16. Whenever any constable, to whom an execution shall have been delivered, shall fail to make the money, on or before the return day thereof, it shall be lawful for the plaintiff or plaintiffs, his or their agent or attorney, to notify said constable, and his security or securities, or any or either of them, in writing, that he or they will, on the day mentioned in said notice, (which shall in no case be less than five days from its service,) move the justice of the peace, who issued any such execution for judgment against him or them, for the amount of said execution and costs; and the said justice shall, on satisfactory proof being made, that said notice has been served five days previous to the return day thereof, proceed to hear and determine said cause. And should it appear on trial, that the said money could have been made with due diligence, the said justice shall proceed to give judgment against said constable and his securities that may have been served with notice, for the amount of such execution and costs thereon; and issue execution for the same.

*Ib.* Sec. 2.  
Motions may  
still be made  
in circuit or  
co'ty courts

1834—(18)

Sec. 1.  
Constables  
to give bond  
and security.

§ 17. Nothing in this act shall be so construed, as to prevent any person from moving against constables in the circuit or county courts as heretofore.

§ 18. Whenever any constable shall be elected, he shall, before he enters on the duties of his office, enter into bond, with at least two sufficient securities, to be approved by the judge of the county court of the county where he may be elected; conditioned that he will pay over all moneys collected by him in virtue of his office, and otherwise faithfully discharge all the duties required of him by law.

*Ib.* Sec. 2.  
Constable  
may be re-  
quired to re-  
new bond.

§ 19. Whenever it is made known to the judge of the county court, that the bond or security, of any constable in his county, is not sufficient or solvent, the said judge shall notify such constable to renew his bond, and should such constable fail to do so within ten days after notice served on him, his office shall be vacated; and the judge shall order the proper officer in such constable's beat to hold an election for a constable, as now provided for by law.

1833—(45)

Sec. 1.  
Town con-  
stables may  
execute pro-  
cess from  
a justice, as  
other const-  
ables.

But shall  
take oath and  
give bond.

§ 20. It shall be lawful for the constable now, or who may hereafter be, elected for any incorporated town within this state, to execute, within the limits of any such town, warrants or other process issued by any justice of the peace, in the same manner as constables are in the several counties in this state: *Provided*, That, before any such constable shall be authorized as aforesaid, he shall be required to take the oaths and execute bond before the judge of the county court, under the same rules and regulations as required of other constables; *And provided, further*, That such town constable shall be subject to all laws and penalties provided for other constables in this state.

1843—(34)

Sec. 1.  
A constable  
& his securi-  
ties liable for  
moneys col-  
lected on  
summons or  
warrant in  
civil case be-  
fore judg-  
ment render-  
ed, &c.

*Ib.* Sec. 2.  
Constable  
failing to pay  
over, pl'tiff

§ 21. If any constable shall receive or collect any money, on any summons or warrant in any civil case, before judgment shall have been rendered thereon, or before any execution, or after the return day thereof, such money shall be deemed and taken to have been collected by such constable in his official capacity; and such constable and his securities, in his official bond, shall be liable to pay the same to the plaintiff, in like manner as if such money had been received or collected by such constable, on an execution in force in his hands.

§ 22. If any constable shall fail or refuse to pay over any such money, so collected, to the plaintiff, or his agent, or attorney, or the justice of the peace issuing such warrant, summons or execution, on



demand, the plaintiff may recover the same from such constable, and his official securities, together with five per centum on the amount, for every month after such demand and failure or refusal, as damages, and such recovery may be had in a summary manner, on notice and motion, in like manner as if such money had been collected on an execution in force by such constable: *Provided, however,* That such demand shall be made and such notice given, within six months after such moneys may have been so collected and received.

Proviso.

## LAWS.

§ 1. No power of suspending laws shall be exercised, except by the general assembly, or its authority.

Con. Ala.  
Art. 1, Sec.  
15.

§ 2. No *ex post facto* law, nor law impairing the obligation of contracts, shall be made.

Laws, how  
suspended.  
Ib. Sec. 19.

§ 3. All laws and parts of laws now in force in the Alabama territory, which are not repugnant to the provisions of this constitution, shall continue and remain in force as the laws of this state, until they expire by their own limitation, or shall be altered or repealed by the legislature thereof.

*Ex post facto*  
laws.  
Ib. Schedule,  
Sec. 5.  
Territorial  
laws con-  
firmed.

§ 4. Within five years after the adoption of this constitution, the body of our laws, civil and criminal, shall be revised, digested, and arranged under proper heads, and promulgated in such manner as the general assembly may direct; and a like revision, digest, and promulgation, shall be made within every subsequent period of ten years.

Ib. Art. 6,  
Sec. 20.  
Laws to be  
digested and  
promulgated  
every ten  
years.

§ 5. The Digest of the statute laws of this state, made by C. C. Clay, is hereby received.

1843—(35)  
Sec. 1.  
Clay's Digest  
received.

§ 6. There shall be printed and bound, three thousand copies of the digest of the laws of the state; which, when completed, shall be disposed of and distributed in the following manner, to wit: after reserving fifty copies in the office of the secretary of state, for the use of the members of the general assembly, to the secretary of state of the United States, four copies; to the executive of each of the states of the union, one copy; to the governor of this state, the comptroller, treasurer, secretary of state, and each of the judges of the supreme, circuit and county courts, and each of the chancellors of this state, one copy; to each of the clerks of the circuit and county courts, and each of the masters and registers in chancery, one copy, to be kept by them for the use of their respective courts, in their respective counties; to the attorney-general, and each of the solicitors of the state, one copy; to each justice of the peace, one copy, who shall receive the same, upon application to the clerk of the county court in which he resides, and shall execute and deposit with the clerk aforesaid his receipt, that, at the expiration of his term of service, or at the time he shall cease to exercise the duties of his office, he will return the same to the clerk of the county court of his county, or his successors in office; which receipt shall be filed in the office of the clerk of the county court of said county; the residue of the copies shall be sold at the price of two dollars and fifty cents per copy, in the manner following: There shall be appointed by the governor, in each county in this state, suitable agents to dispose of the same, and each agent shall give bond, payable to the governor, and his successors in office, to be deposited in the office of the secretary of state, conditioned to account to the state for all the

Ib. Sec. 4.  
3000 copies  
to be print-  
ed and distri-  
buted.

Justices re-  
ceiving Di-  
gest, to give  
bond.

Governor to  
appoint a-  
gents to sell.  
Agent's bond



moneys which he may receive for the sale of said books, and pay the same into the state treasury.

*Ib. Sec. 5.*  
Other mat-  
ters to be in-  
cluded in the  
digest.

§ 7. "An Act to enable the people of the Alabama Territory to form a constitution, and state government, and for the admission of such state on an equal footing with the original states;" the Declaration of Independence; the Constitution of the United States, and of the State of Alabama, shall also be printed and bound up in said digest.

*Ib. Sec. 7.*  
Sec'y of state  
to have it dis-  
tributed.

§ 8. So soon as the said work is completed, it shall be the duty of the secretary of state, to cause it to be distributed as the laws and journals now are.

NOTE.—The comptroller is required to have the revenue laws printed and distributed every year, immediately after the adjournment of the general assembly.—See "Financial Department,"—§ 15.

Laws of other States, and of the United States, how authenticated:—See "Judicial Proceedings at Common Law—Trial and Evidence." Private acts may be given in evidence from the printed statute book, without being specially pleaded;—See the same title.

## LAWS AND JOURNALS.

1822—(15)  
a 1833—(6)  
Sec. 1.  
State print-  
er's election,  
and term of  
service.  
*Ib. Sec. 3.*  
His bond.

§ 1. THERE shall be a state printer elected annually, by a joint vote of both houses of the general assembly, "whose term of service shall commence on the eighteenth day of January, in each and every year, and shall continue for twelve months.

§ 2. Before entering on the duties of his or their station, he or they shall enter into bond, payable to the governor of the state, and his successors in office, with at least two approved sureties, in the penal sum of five thousand dollars,<sup>1</sup> conditioned in substance, as follows: "The condition of the above obligation is such, that whereas A. B. has been elected State Printer for the State of Alabama, for one year, from and after the eighteenth day of January: Now, if the said A. B. shall well and truly perform all the duties, which, by law, appertain to the office aforesaid, during the time for which he was elected, then the said obligation to be void, else to remain in full force and virtue;" which bond shall be deposited in the office of the secretary of state.<sup>2</sup>

1823—(15) &  
1823—(39) &  
1833—(2)  
consolidated.  
State printer  
to print the  
laws & jour-  
nals, and  
whatever  
may be ne-  
cessary for  
the general  
assembly &  
state officers.

§ 3. It shall be the duty of the printer, so appointed, to print and publish two thousand two hundred copies of the acts and resolutions, one thousand copies of the journal of the house of representatives, and seven hundred and fifty copies of the journal of the senate; and to do all the printing that may be ordered for the use of either branch of the general assembly, when in session; also, whatever printing may be necessary for the executive office, the office of the secretary of state, the comptroller's office, and the treasurer's office, for the current year.<sup>3</sup>

<sup>1</sup> In such sum as the governor may deem necessary.—See § 12, *post*.

<sup>2</sup> The act of 1828, provides "that the state printer shall, within ten days after his election, give bond, &c. and on failure so to give bond, the office shall be vacated, and the general assembly shall proceed to elect another, in the manner prescribed by law."

<sup>3</sup> This section is modified by § 11, *post*.



§ 4. The acts and resolutions of the general assembly, shall be printed with type of the denomination of small pica, the marginal notes thereof affixed with brevier, and the captions thereof in italic of the size of small pica; and the journals of each house with small pica, and published as hereinafter directed.<sup>a</sup>

§ 5. The secretary of state shall, within ten days after the rising of the general assembly, deliver to the printer so elected, a fair copy of the acts and resolutions thereof, affixing thereunto proper marginal notes, stating the purport of each section; also, within twenty-five days thereafter, deliver to the printer a fair copy of the journals of each house of the general assembly, and also direct the printer in what manner and how the acts of the general assembly and the journals of each house are to be distributed.<sup>b</sup>

§ 6. It shall be the duty of the secretary of state, in preparing the laws passed at each session of the general assembly for publication, to arrange them in two divisions; the first division to embrace all such as are general and public; the second, those which are local or private; and to provide a separate index for each division. The laws and acts in each division, shall be inserted in the exact chronological order in which they have been approved, and numbered consecutively, commencing from the first law or act in each division.

§ 7. Within seventy-five days after the end of each session of the general assembly, the printer shall deliver to the clerk of the county or circuit court of each and every county in this state, the number of copies of the acts and resolutions as directed by the secretary of state, substantially stitched together in one pamphlet: also, the number to be directed to be delivered to the secretary of state, with such number of copies covered with boards, as may be necessary for an interchange of laws with our sister states, as is hereinafter provided for: and the printer shall, within thirty-five days after the time given for the completion of the acts aforesaid, in like manner deliver the number of copies of the journals of each house as directed, collected and stitched together, the journals of each house in one pamphlet.

§ 8. It shall be the duty of the secretary of state, to retain, for the use of the executive officers and the two branches of the general assembly, fifty copies of the acts and resolutions of each session, and shall cause to be transmitted to the secretary of state of the United States, four copies, and to the executive officers of the several states, one copy each; with a request that they send to the executive of this state, in exchange, as many copies of their laws or session acts; and shall direct a distribution to be made in the following manner, that is to say: to the comptroller of public accounts, one copy; to the treasurer of the state, one copy; one to each of the judges of the supreme and circuit courts; one to the attorney-general; one to the quarter-master general; one to each solicitor; and to the clerks of the several courts of the several counties in the state, in proportion to the population of each county, agreeably to the enumeration last before made; and the clerks of the several counties shall, upon the receipt of said pamphlets, distribute the same in the manner following, to wit: to each member of the general assembly from the county, one copy; and to every civil officer, (including commissioners of revenue and roads,) one copy. And the secretary of state shall also retain fifty copies of the journals of each house, for the use of the executive and general assembly, and shall direct the residue to be distributed to the several officers of the state hereinbefore men-

<sup>a</sup> See § 11.

Secretary of state to furnish printer with copy of laws and journals, and direct distribution.

<sup>b</sup> See § 14. Laws, how to be arranged.

Laws to be distributed within 75 days after the session,

and journals within 35 days thereafter.

Laws, to whom distributed.

[c1833—(18) Sec. 1.]

[d1830—(20) Sec. 3.] Journals, to whom distributed.



tioned, one copy each ; one thereof to the secretary of the senate ; one to the clerk of the house of representatives ; and to the clerks of the several circuit courts of the several counties, in proportion to the population of each ; and the clerks of the counties, respectively, shall distribute the same, as follows : to each member of the general assembly from the county, one copy ; and to each justice of the peace, one copy.

1824—(23)  
Sec. 1.  
Journals to be deposited at election precincts.

§ 9. It shall be the duty of the judges of the county courts in the several counties, immediately on the receipt of the journals of the senate and of the house of representatives, to cause the same to be deposited at the several places appointed for holding elections for senators and representatives, in proportion to the number of votes given in at each election precinct.

*Ib. Sec. 2.*  
Judge may draw on the county treasurer for necessary expenses.

§ 10. The judges of the several county courts are authorized to draw on the county treasurer of their respective counties, for such amount as may be necessary to carry this act into effect : and it shall be the duty of the county treasurers, respectively, to pay the sum so drawn for, out of any money in the treasury not otherwise appropriated.

1840—(30)  
Sec. 1.  
Mode of executing the printing for the general assembly and executive offices.

§ 11. The printing for the general assembly and executive offices shall be executed in the following manner, viz : all bills, for either house, shall be printed on foolscap paper, on small pica type. Rule or table work in royal octavo size, where it can be brought into that size in any type not smaller than brevier, and where it cannot, in such form as to fold conveniently into the volume or pamphlet. All other printing with a small pica type, in pages of the same size as those of the journals of the last year. And the following prices shall be allowed and paid for the above described work : for the composition of every page of bills, two dollars and fifty cents ; of every octavo page of small pica, plain work, one dollar and seventy-five cents ; of every page of small pica, rule work, three dollars and fifty cents ; of every page of brevier rule work, five dollars and fifty cents ; and for a larger form of brevier work in proportion. For the press work of bills, including paper, folding and stitching, for thirty-five copies, one dollar and seventy-five cents per page ; for one hundred copies, two dollars and seventy-five cents per page ; for the press work of tables, other than those in the regular octavo form, for one hundred copies, including as above, three dollars per form. The laws shall be printed as heretofore, with small pica type and minion side notes, for the composition of which the printer shall receive two dollars per page. The journals shall be printed as heretofore, in royal octavo pages, in small pica type, for the composition of which the printer shall receive one dollar and seventy-five cents per page. For the press work of the laws, including paper, folding and stitching, for three thousand copies, four dollars per page ; for the press work of the house journal, for fifteen hundred copies, two dollars and fifty cents per page ; for the senate journal, for seven hundred and fifty copies, one dollar and fifty cents per page. For all other press work in the octavo form, for one hundred copies, including as above, thirty-seven and a half cents per page, and for a larger or smaller number in proportion. All blanks for the executive offices to be charged and paid for the same as bills, with the exception of land patents and other parchments, for which the printer shall receive ten cents per copy, the state finding the parchment.

Prices of the public printing.  
a See § 16.

*Ib. Sec. 2.*

§ 12. As soon as this act shall have been approved by the governor, the two houses will proceed to elect a printer, who shall serve for



one year from the 16th of January, 1840, and who shall give bond, with sureties, in such sum as the governor may deem necessary, for the prompt, accurate and neat execution of the work.

Printer to be elected, and to give bond and security.

§ 13. For all work done by the order of the house or senate, or either of the executive officers, the printer shall procure a certificate of such order from the clerk of the house, or secretary of the senate, or from the officer of the executive department, ordering such work, upon presentation of which to the comptroller, with a copy of the work ordered, he (the comptroller) shall issue his warrant upon the treasurer for the payment of the same, according to the mode prescribed in this act; and upon the delivery to the secretary of state of the laws and journals, or either of them, the secretary of state shall give his certificate or receipt for the same, upon which the comptroller shall issue his warrant as before directed: *Provided*, That the laws are so delivered, within fifty, and the journals within eighty days, after the adjournment of the general assembly.

*Ib. Sec. 3.*  
On what vouchers the price of printing is to be paid.

§ 14. It shall be the duty of the secretary of state, to furnish the printer with a fair copy of the laws within ten days, and of the journals within twenty-five days after the adjournment of the general assembly; for which he shall receive the same compensation as he has heretofore received.

*Ib. Sec. 4.*  
Sec. of state to furnish printer with laws and journals.

§ 15. It shall be the duty of the secretary of state, to employ competent and responsible persons, who shall give bond, with such security, and in such sum, as the secretary may deem necessary, to distribute the laws and journals to the different counties in the state, within thirty days after they have been delivered to the secretary, by the printer; and no such distributor shall receive his pay for the same, until he presents the secretary of state with the receipt of the county clerk, (or in his absence, of the judge of the county court, or clerk of the circuit court,) for the requisite number of laws and journals, for each county to which he may have agreed to distribute the same.

*Ib. Sec. 5.*  
How and when the laws and journals are to be distributed.

§ 16. The state printer shall receive for every description of type, printing, or work of any kind done for the public as printer for the state, twenty per centum less than the prices set forth and established in the first section of an act entitled "An Act for the better regulation of the state printing, and altering the mode of paying for the same," approved February 4th, 1840.

1843—(36)  
Sec. 1.  
Compensation of state printer.

§ 17. The secretary of state shall divide the state into four districts, and he is authorized to employ one agent for the purpose of distributing the acts and journals of the state of Alabama in each district.

*a See ante § 11.*  
*Ib. Sec. 2.*  
Sec'y. to employ agents to distribute acts and journals.

## LAWS OF THE UNITED STATES.

§ 1. It shall be the duty of the governor, and his successors in office, to procure, or cause to be procured, for the use of the citizens of the several counties in this state, a sufficient number of copies of the acts of the present and subsequent sessions of the congress of the United States, to furnish one to the offices of the clerks of the several county courts in this state, there to be kept for the use of the citizens of the respective counties.

1838—(32)  
Governor to furnish the clerk of each county court with a copy of the acts of congress.



1831—(5)  
*Sec. 1.*  
 Secretary to  
 cause the  
 acts of con-  
 gress to be  
 distributed  
 at the same  
 time with  
 the laws and  
 journals.

§ 2. It shall be the duty of the secretary of state, at the time he may distribute the acts and journals of the general assembly, to distribute the acts of the congress of the United States, which may be in his office, among the several counties of this state, according to the ratio by which the acts and journals of the general assembly are distributed: *Provided*, That each county shall be entitled to at least one copy, which shall be retained in the office of the clerk of the county court, for the use of the county; and at least ten copies shall be retained in the office of the secretary of state.

1843—(37)  
*Sec. 1.*  
 To have pub-  
 lic land doc-  
 uments dis-  
 tributed.

§ 3. It shall be the duty of the secretary of state, to cause to be distributed, in the manner hereinafter pointed out, the documents, legislative and executive, of the congress of the United States, in relation to the public lands, which have been received, or may hereafter be received, for that purpose.

*Ib. Sec. 2.*  
 How dis-  
 tributed.

§ 4. One copy of said work shall be deposited in the executive office; two copies in the office of the secretary of state; and one copy shall be retained for the use of each branch of the general assembly; and the remaining copies shall be distributed as follows: To the library of the supreme court, two copies; to the office of each of the clerks of the circuit court, one copy; and to the office of each of the registers in chancery, one copy: *Provided*, That the office of the clerks of the circuit court of the county of Mobile, shall be entitled to two copies; *And provided, further*, That if there should be any lack of copies for the supply of all the offices herein provided for, the offices of the clerks of the circuit courts shall be first supplied.

*Ib. Sec. 3.*  
 Contracts for  
 distribution,  
 how made.

§ 5. Contracts for the distribution contemplated in this act, shall be made in the same manner, and payments for the distribution made in the same way, and out of the same fund, as is, or may be directed, or provided for the distribution of the laws and journals of the present general assembly.

*Ib. Sec. 4.*  
 Payment of  
 contingent  
 expenses.

§ 6. The contingent expenses for putting up the said books, for safe distribution and delivery, as aforesaid, shall be paid upon account, stated by the secretary of state, upon the order of the governor, out of any moneys in the treasury, not otherwise appropriated.

## MARRIAGE.

1805—(1)  
 [a 1836—(23)  
*Sec. 1.*  
 [b 1821—(2)  
*Sec. 1.*  
 Who may  
 solemnize  
 the rites of  
 matrimony.

§ 1. ANY judge of the supreme, "circuit or county courts of this state, any ordained or licensed minister of the gospel, and any justice of the peace, within the county in which such justice is assigned to keep the peace, may solemnize the rites of matrimony between any free persons within this state, who shall produce a license as hereinafter directed: *Provided*, That such minister shall have produced to the orphans' court of some county in this state, credentials of his ordination or license, and of his being in regular communion with the Christian society of which he is a member; and have obtained from such court, a testimonial authorizing him to solemnize the rites of matrimony in this state; which testimonial shall be granted at the discretion of said court, and recorded by the register in a book to be kept for that purpose, and also for the purpose of recording therein all marriage licenses, consent of parents and guardians, and certificates of the solemnization of marriages.

Ministers'  
 testimonials.



§ 2. It shall be lawful for every pastor of any religious society in this state, to join together in marriage, such persons as are of the society, according to the rules and customs established by such society to which they belong: *Provided*, That the clerk or the keeper of the minutes, proceedings, or other books, of the religious society wherein such marriage shall be had and solemnized, shall make a true and faithful register of all marriages solemnized in the society, in a book by him kept, and return a certificate of the same to the register of the orphans' court, to be by him entered in his book kept for that purpose.

Marriages by the customs of religious societies.

Clerk of society to certify marriages to orphans' court.

§ 3. Such book of marriages, so kept by the respective registers of the orphans' court, and by the clerks of such religious societies as are authorized to solemnize marriages by the preceding section of this act, shall be admitted as evidence in all the courts of law and equity in this state.

Registry of marriages to be received as evidence in courts.

§ 4. It shall be lawful for the people called Quakers, and Menonists, or any other Christian society, that have adopted similar regulations in their church, to solemnize their own marriages, and be joined together as man and wife by the mutual consent of the parties, openly published and declared before their congregation, when convened for religious worship, in manner, and agreeably to the regulations heretofore practiced in their respective societies.

Quakers, &c.

§ 5. Marriage licenses shall be granted and issued, by the register of the orphans' court of the county in which the female usually resides, under the following regulations and restrictions: the register shall take a bond, with sufficient security, in the penal sum of two hundred dollars, payable to the governor of this state, for the time being, and his successors in office, for the use of the state, conditioned, that there is no lawful cause to obstruct the marriage for which such license is required; and if the male, intending to marry, be under the age of twenty-one years, or the female under the age of eighteen years, the consent of the parent or guardian of such infant shall be personally given before the said register, or due proof made to him by the oath of at least one credible witness, (which oath the said register is hereby authorized to administer,) that such parent or guardian did sign a certificate, then produced, giving his consent for the celebration of such marriage: whereupon, the said register shall record the consent, personally given as aforesaid, or the certificate thereof, proved as aforesaid, and issue a license, and record the same, directed to any judge, minister, or justice, lawfully authorized to celebrate the rites of matrimony. And if any register shall issue any marriage license, without the requisites before prescribed, or in any other manner than above mentioned, such register shall, for each offence, forfeit and pay five hundred dollars, recoverable by action of debt, in any court having cognizance thereof, one-half to the use of the state, and the other half to the use of the person suing for the same.

Licences to be issued by the register of the orphans' court. Under what restrictions.

Consent of parents and guardians.

Penalty of 500 dollars for issuing license illegally.

§ 6. If any judge, minister, or justice, shall join any persons together as man and wife, without lawful license, as by this act required, or go out of the state and marry persons belonging to the state, without such license, such judge, minister, or justice shall, in either case, forfeit and pay the sum of one thousand dollars, to be recovered by action of debt; one-half to the use of the state, and the other half to the use of the person suing for the same.

Penalty of \$1000 for marrying without license, &c.

§ 7. A certificate of every marriage hereafter solemnized, signed by the judge, minister, or justice, celebrating the same, (or in case of Quakers, Menonists, and other societies that solemnize their mar-

Judges, &c. to transmit certificate of marriage to



the register of orphans' court.

Register's fees.

Penalty of \$50 for not returning certificate.

Degrees within which persons shall not marry.

Persons marrying unlawfully, to be indicted, and marriage declared void—but issue not bastardized.

1818—(12)  
Sec. 1.  
Certain marriages legalized.

1821—(2)  
Sec. 2.  
Marriages by licensed ministers.  
1836—(23)  
Sec. 2.  
By judges.

riage by consent of parties, taken in open congregation as aforesaid, by the clerk of the meeting,) shall be transmitted by such judge, minister, justice, or clerk, (as the case may be,) to the register of the orphans' court of the county wherein the marriage is solemnized, to be recorded within six months thereafter by the register; an exemplification of which shall be evidence of such marriage. And the register shall receive for his services, for taking bond, consent of parents or guardians, and recording the same, granting and recording license, and marriage certificate, the sum of two dollars, to be paid at the time of issuing such license. And every judge, minister, justice, or clerk of a congregation, (as the case may be,) failing to transmit such certificate to the register, within the time above prescribed, shall forfeit and pay the sum of fifty dollars, to any person who will sue for the same.

§ 8. If any person shall marry within the following degrees, that is to say: if the son shall marry his mother or step-mother, the brother his sister, the father his daughter, or his daughter's daughter, or if the son shall marry the daughter begotten and born of his step-mother; or his aunt, being his father's or mother's sister; or marry his uncle's widow; or if the father shall marry his son's widow; or if any man shall marry his wife's daughter, or his wife's son's daughter, or his wife's daughter's daughter; such persons, so unlawfully married, shall be prosecuted by indictment; and, on conviction, shall be fined not exceeding five hundred dollars, to the use of the state.<sup>1</sup> And the court, on conviction as aforesaid, shall moreover declare such marriage null and void to all intents and purposes; and may, at their discretion, cause the parties, so separated, to enter into a recognizance, with security, that they will not cohabit thereafter: *Provided*, That nothing, herein contained, shall be so construed as to render illegitimate the issue of any such marriage, begotten before the same is so annulled.

§ 9. All marriages, which were solemnized without license, in any county of this state, before the organization of the same, are hereby made lawful and obligatory in all respects, and the offspring of such marriages are hereby made legitimate to all legal intents and purposes.

§ 10. All marriages, which may have been solemnized by any *licensed* minister, are hereby declared legal.

§ 11. All marriages, which have been heretofore solemnized by any of the judges of the supreme or county courts, are hereby declared legal.

## MASONIC INSTITUTIONS.

1821—(11)  
Grand and subordinate lodges incorporated.

§ 1. *Be it enacted, &c.* That Thomas W. Farrar, grand master, and others, the officers and members of the most worshipful grand lodge of ancient free-masons of Alabama, and the subordinate lodges under its jurisdiction, and the several persons who now are, or shall hereafter be members, respectively, of said grand lodge, or the sub-

<sup>1</sup> The punishment for incestuous marriages is changed to the penitentiary, not less than two, nor exceeding seven years. See "Penal Code," chap. 6, § 6.



ordinate lodges under its jurisdiction, shall be, and they are hereby declared to be, a body politic and corporate, in name and in deed, by the name and style of the "*Most Worshipful Grand Lodge of Ancient Free-Masons of Alabama, and its Masonic Jurisdiction*," and by the same name shall have perpetual succession of officers and members, and a common seal, with power to change, alter, and make new the same, as often as the said corporation shall judge expedient.

§ 2. The said society, and the lodges under its jurisdiction, shall be able and capable in law, to purchase, have, hold, receive, enjoy, possess, and retain to itself, or any lodge under its jurisdiction, or any of them in perpetuity, or for any term of years, any lands, tenements, or hereditaments, of what kind or nature soever, not exceeding the value of twenty thousand dollars; and to sell, alien, exchange, or demise, or lease the same, or any part thereof, as the said corporation shall think proper, and by the same name to sue and be sued, to plead and be impleaded, answer and be answered unto, in any court of law or equity in this state, and to make such rules, orders and by-laws, not repugnant to the laws of this state, as may be necessary for the order, rule, good government, and management thereof; and it shall be lawful for the said society to constitute subordinate lodges, and to do all other things concerning the government, the estates, moneys, and revenues of said grand lodge and subordinate lodges.

§ 3. It shall be lawful for the said corporation, to take and hold forever, any charitable donation or devises, and bequest of lands, not exceeding ten thousand dollars, and to appropriate the same for the benefit of said corporation, in such manner as may be determined by the same.

§ 4. The said corporation shall be capable in law, to have, hold, and receive, possess and enjoy all such estates, real and personal, moneys, goods, chattels, and effects, which may be devised or bequeathed thereto, by whatever name such gift, devise, or bequest may be made, and to receive subscriptions and other contributions.

§ 5. This act shall be deemed and taken as a public act, and notice thereof shall be taken in all the courts of justice and elsewhere in this state, and shall be given in evidence on any trial of any issue or cause, without special pleading.

## MECHANICS.

§ 1. MASTER builders and mechanics of every denomination, contracting in writing to put up and erect buildings, of every description, shall have a lien in the nature of a mortgage, upon the tract, parcel, or lot of land, upon which such building or buildings shall be put up and erected, as well as upon the said building or buildings, until the price or compensation for services, and for materials found, shall be fully paid and satisfied; unless a contrary stipulation be made and agreed upon at the time it is entered into: *Provided, always*, That such lien shall not have a priority over *bona fide* mortgages or legal incumbrances, existing anterior to the time of the contract being made, if the said mortgages and incumbrances shall be duly recorded according to law.



Contracts to be recorded.

§ 2. Every contract, made and entered into as aforesaid, shall be recorded in the office of the clerk of the county court, for the county where such buildings, as aforesaid, shall be erected and put up, within the space of thirty days after the erection of the same, or, otherwise, the said lien shall cease and be inoperative.

Execution may be levied on lot & buildings.

§ 3. When suit shall be brought, by any master builder or master builders, mechanic or mechanics, upon any contract made, executed, and recorded, as aforesaid, and a judgment or decree shall be rendered in favor of such master builder or mechanic, execution for the amount of the same may be levied upon the tract, parcel or lot of land, upon which such building or buildings have been put up and erected, as well as upon the buildings and improvements thereon erected and made, and all the right, title and interest, which the defendant had in and to the said tract, parcel or lot of ground, at the time the contract was entered into, as well as the buildings and improvements erected and made thereon, may be sold to satisfy such judgment or decree:

Proviso.

*Provided, nevertheless,* That nothing, in this act contained, shall prevent such master builder or mechanic, from levying his said execution upon any other property, belonging to the person or persons against whom such judgment or decree shall have been rendered.

Repeal of former act.

§ 4. An act passed 15th June, 1821, entitled "An Act for the relief of master builders and mechanics of the state of Alabama," together with all other acts coming within the purview and meaning of this act, are hereby repealed, saving and reserving, however, to master builders and mechanics, all the legal rights which they have acquired under the act aforesaid: *Provided,* That nothing in this act shall prevent the owner of said lot or land, from relieving said building from the lien, by giving good security for the price of the building.

Proviso.

## MILLS AND MILLERS.

1811—(4)  
What mills to be deemed public.  
*Ib.* Sec. 4.  
Nuisances.

§ 1. EVERY water grist-mill, which shall at any time grind for toll, shall be deemed and held to be a public mill.

§ 2. It shall not be lawful for any person to erect a mill, so as to overflow any other mill, or create a nuisance to the neighborhood.

1812—(5)  
Sec. 1.  
How to proceed when the person desiring to build a mill, owns the land on one side of the stream only.

§ 3. If any person, owning lands on one side of any water-course, and desiring to build a water grist-mill, saw-mill, cotton-gin, or other useful water-works on such lands, and to erect a dam across the same for working said mill, shall not himself have the fee-simple property in the lands on the opposite side thereof, against which he would abut his dam; or if he should have lands adjoining others, through which it may be necessary to dig a ditch or canal, in order to erect such mill on his own lands, he shall make application for a writ of *ad quod damnum*, to the clerk of the county court of the county wherein the lands proposed for the abutment, ditch, or canal, are; which clerk shall thereupon issue such process, directed to the sheriff of the county, commanding him to summon and empanel seven freeholders or landholders, to meet upon the lands, so proposed for the abutment, ditch, or canal, on a certain day to be named by the clerk, and inserted in the said writ, of which ten days' previous notice shall be given by the sheriff to the proprietor, his agent, or tenant.

Empannelment of seven freeholders or landholders.



§ 4. The freeholders or landholders, so taken, shall be charged by the sheriff, impartially and to the best of their skill and judgment, to view the land so proposed for the abutment, and to locate and circumscribe by certain metes and bounds, one acre thereof, having due regard therein to the interest of both parties, and to appraise the same according to its true value; to examine the lands above and below, of the property of others, which may probably be overflowed, and to say what damage it will be to the several proprietors, and whether the mansion-house of any such proprietors, offices, curtileges, or gardens, thereunto immediately belonging, or orchards, will be overflowed; to inquire whether, in their opinion, the health of the neighbors will be materially annoyed by the stagnation of the waters, and if it be a ditch or canal proposed through another's land, then to inquire what damage the same may be to the proprietor, and assess the same accordingly.

*Ib. Sec. 2.*  
Jury to view  
lands, and  
assess dam-  
ages.

§ 5. The inquest, so made and sealed by the said jurors, or a majority of them, together with the writ, shall be returned by the sheriff to the succeeding county court, who shall thereupon order summonses to be issued to the several persons, proprietors or tenants of the land so located or found liable to damage, if they are to be found within the county, and if not, then to their agents therein, if any they have, to show cause why the party applying should not have leave to build said mill and dam.

*Ib. Sec. 3.*  
Inquest to be  
returned to  
county court,  
and citation  
to issue to all  
interested.

§ 6. If the lands, above proposed for the abutment, ditch, or canal, should be the property of an infant, or person *non compos mentis*, then the notices, heretofore directed to be given, shall be given to his guardian, if any he hath, if not, then it shall be the duty of the orphans' court to appoint one, to whom such notices may be given; and if said lands shall belong to non-residents, the notices, before required, shall be published three weeks successively, in the nearest gazette, which shall be deemed as good and effectual as if served on the parties personally.

*Ib. Sec. 4.*  
How the no-  
tice is to be  
given when  
owner of  
land is an in-  
fant, person  
*non compos*  
*mentis*, or  
non-resident.

§ 7. In like manner, if the person, proposing to build such mill and dam, shall have the property in the lands on both sides of the stream, yet, application shall be made to the clerk of the county court, wherein the mill-house will stand, for a like writ, which writ shall be directed, executed and returned, as prescribed in the former case.

*Ib. Sec. 5.*  
When build-  
er owns the  
land on both  
sides of the  
stream.

§ 8. If, on such inquest or other evidence, it shall appear to the court, that the mansion-house of any proprietor, or the offices, curtileges, or gardens thereto immediately belonging, or orchards, will be overflowed, or that the health of the neighbors will be materially annoyed, they shall not give leave to build said mill and dam; but if these injuries are not likely to ensue, leave shall be given as aforesaid. If any person shall think himself aggrieved by the determination of the county court, he may appeal therefrom to the next circuit court for the county in which the land lies; which court shall take cognizance of the same, and confirm or reverse such order, and give such judgment therein as may appear reasonable and right.<sup>1</sup>

*Ib. Sec. 6.*  
When leave  
shall, and  
when it shall  
not, be given  
to build.  
  
[a 1811—(4)  
Sec. 7.]  
Parties may  
appeal to cir-  
cuit court.

§ 9. If the party applying obtain leave to build said mill and dam, he shall,—upon paying, respectively, to the several parties entitled to

*Ib. Sec. 7.*  
One acre to  
be conveyed  
on payment  
of damages.

<sup>1</sup> The latter part of this section, although taken from an act passed in 1811, has reference to proceedings in all respects similar to those directed in the act of 1812.



receive the same, the value of the acre so located, and the damages which, the jurors find, will be done by overflowing the lands, above or below, or both, by the ditch or canal,—become seized in fee-simple of said acre of land, and as much as may be necessary for such ditch or canal: but if he shall not, within one year thereafter, begin to build the said mill, and finish the same within three years, and afterwards continue it in good repair for public use; or in case the said mill or dam be destroyed, he shall not commence the rebuilding within one year after such destruction, and finish it within three years, the said acre shall revert to the former proprietor, and his heirs, unless at the time of such destruction of the said mill or dam, the owner thereof be an infant, *femè covert*, imprisoned, or of unsound mind, in which case he shall be allowed the same terms for commencing and completing the said mill or dam, after such disability is removed.

Time allowed for commencing and completing the work.

*Ib.* Sec. 8. Raising dam higher.

§ 10. When any owner of a mill, established by law, may think it necessary to raise his dam, the clerk of the county court of the county wherein the pond lies, upon application to him, shall grant a second writ of *ad quod damnum*, to value the additional damage done thereby, and under the same rules and regulations as hereinbefore directed.

1830—(7)  
Sec. 1.  
To grind in rotation.

§ 11. It shall be the duty of all owners of mills, or persons employed in keeping a mill within this state, who shall grind grain for toll, to grind each turn in rotation as it is received in the mill, and shall grind all grain well, if water will permit, and may take and receive one-eighth part of the grain so ground for toll, and no more.

One-eighth lawful toll.

*Ib.* Sec. 2. Penalty.

§ 12. If any person or persons shall commit any offence against the provisions of this act, he, she, or they shall, on conviction, forfeit and pay the sum of ten dollars, with costs, for every such offence, to be recovered before any justice of the peace in the county where such offence may be committed; and the money, so recovered, shall be paid over to the person who may sue for the same: *Provided*, That nothing in this act shall prohibit any owner of a mill from grinding his own grain at any time.

Owner of mill may grind his own grain at any time.

1835—(18)

Sec. 1.  
Writs of *ad quod damnum* when returnable, and when heard.

§ 13. All writs of *ad quod damnum* shall be heard and tried by the judge of the county court, at the regular term of the orphans' court; and all such writs shall be made returnable to the next succeeding term of said court, after said writ shall be sued out; and all cases of *ad quod damnum*, which shall be pending in any county court on the first day of March next, shall be transferred to the orphans' court aforesaid.

*Ib.* Sec. 2. Any party, making affidavit of interest, may defend, on giving bond &c.

§ 14. In all cases of *ad quod damnum*, any person, making affidavit that he is interested against the party applying for said writ, and giving bond and security for the payment of all costs, which shall be awarded against him, in case he fail to defeat such application, shall, at any time after the granting of such writ, and before final judgment thereon, be allowed to make himself a party defendant thereto, and contest the same: *Provided*, The provisions of this section shall not apply to any case now pending.

Proviso.

*Ib.* Sec. 3. Repeal of former laws. 1839—(28)

Sec. 1. Steam and horse mills, grinding for toll, public mills.

§ 15. All laws and parts of laws, contravening the provisions of this act, are hereby repealed.

§ 16. All steam and horse mills, that grind for toll, are hereby declared public mills, and subject to all the rules, regulations, restrictions, and provisions of the several acts passed concerning mills and millers.



## NOTARIES PUBLIC.

§ 1. THE governor shall appoint and commission a competent number of persons of known good character, integrity, and abilities, as notaries public of this state, to reside at such place or places within the same, as the governor shall, in and by their respective commissions, direct: *Provided*, That there shall not be more than two notaries appointed and commissioned to reside in any one county in this state.<sup>1</sup>

§ 2. The said notaries, so commissioned as aforesaid, and each of them, shall have the power of administering oaths and affirmations according to law, in all matters belonging or incident to their notarial office: and every person, who shall be legally convicted of having knowingly and willfully made or taken a false oath or affirmation, before any notary, in any matter within his official duty, shall suffer the pains and penalties of willful and corrupt perjury.

§ 3. The said notaries, and each of them, shall have power to receive the proof or acknowledgment of all instruments of writing relating to commerce or navigation, such as bills of sale, bottomries, mortgages, and hypothecations of ships, vessels, or boats, charter-parties of affreightment, letters of attorney, and such other writings as are commonly proved or acknowledged before notaries within the United States; and also, to make declarations and testify the truth thereof, under their seal of office, concerning all matters by them done in their respective offices.

§ 4. Each of the said notaries shall keep fair registers of all official acts by him done, in virtue of his office; and shall, when thereunto required, give a certified copy of any record in his office, to any person applying for the same, such person paying the legal fees for such certified copy.

§ 5. In case of the death, resignation, disqualification, or removal of any of the said notaries, his registers and other public papers shall be lodged within thirty days next after such death, resignation, disqualification, or removal, in the office of the clerk of the county court of the particular county where he resided; and the said clerk may bring and maintain an action of trover or detinue for the same. Such registers or public papers shall not in any case be liable to be seized, attached, or taken in execution for debt, or for any demand whatever.

§ 6. Every notary shall provide a public notarial seal, with which he shall authenticate all his acts, instruments, and attestations; on which seal shall be engraved the arms of this state, and shall have for legend, the name, surname, and office of the notary using the same, and the place of his residence.

§ 7. Every notary on his appointment, and before he enters on the duties of his office, *shall give bond, with sufficient security, to be approved of by the judge of the county court, in the sum of two thousand dollars, payable to the governor and his successors in office, for the faithful performance of his duties*; which obligation shall be recorded in the office of the clerk of the county court, within the county where the notary may reside, and may be sued by any party or parties injured, in like manner, and with like effect, as bonds

<sup>1</sup> For present mode of appointment,—See "County Officers," § 5.



given by sheriffs and coroners, for the faithful execution of their respective offices.

1814—(17)  
Sec. 28.  
Where there  
is no notary  
public, or he  
cannot act,  
justice to act  
as such.

1828—(28)  
Sec. 1.  
Notarial pro-  
test to be evi-  
dence of the  
facts it pur-  
ports to con-  
tain.

§ 8. Where there is no notary public, or where the notary is absent or incapable of acting, any justice of the peace may discharge the duties required of such notary by the acts of this state, for which he shall receive the fees allowed by law for such services.

§ 9. The protest of a notary public,—which shall set forth a demand, refusal, non-acceptance, or non-payment of any inland bill of exchange, or other protestable security for money or other thing, and that legal notice, expressing in the said protest the time when given, of such fact or facts, was personally, or through the post-office, given to any of the parties entitled by law to notice,—shall be evidence of the facts it purports to contain, and entitle the holder of such security to the damages to which by law he may be entitled.

NOTE.—For Notaries' Fees—See "Fees."—p. 236.

## NOTES, BILLS, AND BONDS.

1807—(1)  
Sec. 2.  
Cotton re-  
ceipts.

How assign-  
able.

Assignee's  
right of ac-  
tion.

Ib. Sec. 3.  
Cotton re-  
ceipts, how  
to be con-  
strued, and  
how recov-  
erable.

§ 1. WHENEVER any receipt shall be signed by the owner or owners of any cotton-gin or gins, or by their servant or agent who is usually entrusted to sign such receipts, commonly called "cotton" receipts, whereby such owner or owners, his, her, or their servant or agent, shall acknowledge to have received any quantity of cotton; the quantity of cotton mentioned in such receipt shall be construed to be, by virtue thereof, due and payable to the person or persons of whom the same is acknowledged to have been received. And such cotton receipt shall be assignable over, in like manner as promissory notes are by the foregoing section of this law.<sup>1</sup> And the person or persons, to whom such cotton receipt is assigned or endorsed, may maintain an action against the owner or owners of any cotton-gin, his, her, or their servant or agent, who signed such cotton receipt, or any who may have endorsed the same, as in cases of promissory notes aforesaid, and recover damages and costs of suit.

§ 2. All cotton receipts given by gin-holders, in which no time of payment or delivery of the cotton, therein mentioned, is expressed or limited, shall be taken and construed to be payable or deliverable within four months from the date of delivery of such receipts: and on the non-payment or non-delivery of any cotton specified in any receipt, expressing the time of payment or delivery thereof, at the time so expressed; or on the non-payment or on the non-delivery of any cotton specified in any receipt not expressing the time of payment or delivery thereof, at the expiration of the said four months; the legal holder or holders of such cotton receipt shall, in either case, after lawful demand made, be entitled to recover twenty per centum damages, on the value of the cotton specified in such receipt, with costs of suit: *Provided*, That if any owner of a gin shall deliver the full amount of any cotton due on any such receipt, within fifteen days after lawful demand shall have been made by the legal holder of such receipt, or by his agent; *And provided, also*, That when, from default of the owner or holder of the said receipt, the necessary

<sup>1</sup> "As inland bills of exchange are by custom of merchants in England."



bagging and cordage have not been duly supplied; then, in either case, such owner of a gin shall not be liable to pay any damages whatsoever.

§ 3. When any person or persons shall, by order in writing, signed by his or her proper hand, direct the payment of any sum or sums of money, in the hands or possession of any other person or persons whatsoever, the money therein specified shall, by virtue thereof, be due and payable to such person or persons to whom the same is drawn payable, and may be put in suit against the person or persons who may draw the same, or against the person or persons on whom the same shall be drawn (after acceptance thereof) by him or them, to whom the same shall be made payable, and damages recovered thereon: *Provided, nevertheless*, That no person or persons whatsoever, shall prosecute any suit, against any person or persons who shall give such order for the money herein mentioned, before the same shall have been presented for acceptance, and notice given of the non-acceptance thereof to the drawer; or before the same shall have first been protested or non-accepted, and notice given thereof to the drawer before such suit shall be brought; and if any suit shall be brought on any such order, before notice and refusal to pay as aforesaid, the plaintiff or plaintiffs shall be non-suited and pay costs.<sup>1</sup>

*Ib. Sec. 4.*  
Orders for the payment of money.

Holder not entitled to sue drawer until after non-acceptance by the drawee, and notice thereof to drawer.

§ 4. On all bills of exchange drawn upon any person resident within the United States and out of this state, which shall be returned protested, the damages shall be fifteen per cent. on the sum drawn for,<sup>2</sup> and on all bills, in like manner drawn upon persons resident out of the jurisdiction of the United States, being protested, the damages shall be twenty per cent. on the sum mentioned in said bills, respectively, and all charges incidental thereto, with lawful interest as aforesaid, until the same be paid.

*Ib. Sec. 5.*  
Damages on protested bills.

§ 5. Every bill of exchange, of the sum of twenty dollars and upwards, drawn in, or dated at, and from any place in this state, upon any person or persons within the said state, and payable at a certain number of days, weeks, or months, after date or sight thereof, shall, in case of non-acceptance by the drawee, when presented for acceptance, or if accepted, in case of non-payment by the drawee, when due and presented for payment, be protested by a notary public, in like manner as foreign bills of exchange; and the damages on such bill shall be ten per cent. on the sum drawn for, and shall, in every other respect, be regulated and governed by the same laws, customs, and usages, which regulate and govern foreign bills of exchange: *Provided*, That such protest shall, for want or in default of a notary public, be made by any justice of the peace, whose act in such case shall have the same effect as if done by a notary public.

*Ib. Sec. 6.*  
Damages on bills drawn and payable within the state. To be protested in the same manner as foreign bills.

§ 6. All bonds, obligations, bills single, promissory notes, and all other writings for the payment of money, or any other thing,<sup>a</sup> may be assigned by endorsement, whether the same be made payable to the order or assigns of the obligee or payee, or not; and the assignee may sue in his own name, and maintain any action, which the obligee or payee might have maintained thereon, previous to assign-

1812—(6)  
Sec. 1.  
Assignment of bonds, notes, &c.,  
<sup>a</sup> Provisions extended.  
See § 18.

<sup>1</sup> Notice of non-payment is required only on bills and notes payable in bank,—See § 13.

<sup>2</sup> Ten per cent. on protest for non-payment,—See § 7.



Assignee  
may sue.  
What credits  
and sets-off  
are allowed  
against the  
assignee.

Assignee  
may sue en-  
dorser.

*Ib.* Sec. 5.  
Damages on  
protest.

<sup>a</sup> See § 4.

1832—(35)  
Sec. 1.  
Five per  
cent. dam-  
ages on bills,  
&c. purcha-  
sed by bank.

1828—(29)  
Preamble.

Sec. 1.  
How to re-  
cover on  
bonds de-  
stroyed or  
lost.

*Ib.* Sec. 2.  
Lost bonds,  
how made  
off-sets, &c.

1828—(30)  
Preamble.

ment,(1) and in all actions to be commenced and sued upon any such assigned bond, obligation, bill single, promissory note, or other writing as aforesaid, the defendant shall be allowed the benefit of all payments, discounts, and sets-off, made, had, or possessed against the same, previous to notice of the assignment,(2) in the same manner as if the same had been sued and prosecuted by the obligee or payee therein; and the person or persons, to whom such instrument so payable is assigned, may maintain an action against the person or persons who shall have endorsed the same, as in cases of inland bills of exchange.(3)

§ 7. On inland bills of exchange, on persons without the limits of this state, the damages, on protest for non-payment, shall be ten per cent., besides legal interest, from and after the date of such protest, anything contained in the fifth section of the act to render promissory notes and cotton receipts negotiable, and for other purposes, to the contrary notwithstanding.<sup>a</sup>

§ 8. On all bills of exchange or drafts drawn by any person or persons in this state, and payable at any place within this state, and on all bills of exchange or drafts drawn by any person or persons in this state, upon any person or persons either in or out of this state, and payable at any bank or other place in the city of New Orleans, that may be purchased or discounted by the Bank of the State of Alabama or any branch thereof, and which may be protested for non-acceptance or non-payment, the damages shall be five per cent. and no more.

Whereas, there hath been much uncertainty in the decisions of the courts of this state, respecting the manner in which persons may bring suit upon any bond, bill, note, or other instrument in writing, which may be the foundation of such suit, and which bond, bill, note, or instrument may have been lost, for remedy whereof:

§ 9. *Be it enacted, &c.* That when any person may have or own, or may have had or owned, any bond, bill, note, agreement, or other instrument in writing, the right or title to the same remaining in him, her, or them, and the same shall be, or shall have been destroyed by fire, or lost by accident, such person or persons shall be authorized, upon first making oath in writing, of the loss of such bond, bill, note, agreement or other instrument, and that the same has not been paid, satisfied, or discharged, to sue at common law for, and recover upon the same, upon making proof of the contents of such bond, bill, note, agreement, or other instrument, so lost or destroyed.

§ 10. Any person or persons, defending any suit, shall have a right to plead the loss of any such bond, bill, note, agreement or other instrument in writing in bar, as a release, set-off, or in avoidance of any suit or suits against him, her, or them, on first making oath to the truth of such plea.

Whereas, much injury has been done to the citizens of this state, by means of the uncertainty of the decisions of the courts of this

(1) A note under seal payable to A. B. or bearer, is not transferable by delivery, so as to enable the bearer to maintain an action on it in his own name. *Sayre v. Lucas*, 2 *Stewt. Rep.* 259.

(2) A cotton receipt, assigned by the payee before it is due, is not subject in the hands of an innocent endorsee without notice, to a set-off existing against the payee. *Winston v. Moseley*, 2 *Stewt. Rep.* 137.

(3) The reasonableness of notice to the endorser, is a question for the jury. *Brahan & Atwood v. Ragland*, *Min. Rep.* 85.



state, in relation to the proper time at which endorsers of bills, notes, bonds, and other instruments made negotiable by endorsement, by law, shall make demand of payment, of the payers of such negotiable instrument, for remedy whereof:

§ 11. *Be it enacted, &c.* That, hereafter, the remedy on bills of exchange, foreign and inland, and on promissory notes payable in bank, shall be governed by the rules of the law-merchant, as to days of grace, protest, and notice; and bills drawn and payable within this state shall be deemed inland bills, and those drawn here and payable out of this state, shall be deemed foreign bills.

§ 12. All other contracts in writing, for the payment of money or property, or performance of any duty of whatever nature, shall be assignable as heretofore, and the assignee may maintain such suit thereon, as the obligee or payee could have done, whether it be debt, covenant, or *assumpsit*: *Provided*, Suit be brought to the first court of the county, where the maker resides, to which suit can be brought;<sup>a</sup> and if he shall fail to sue the maker to the first court, as herein provided for, the endorser shall be discharged from liability, unless suit shall be delayed by his consent; and no days of grace shall be allowed on any contract, (except bills of exchange and notes payable in bank,) either between the assignee and the maker, or between the assignee and the assignor.<sup>b</sup>

§ 13. Notice of non-payment shall only be required on bills of exchange and notes payable in bank.

§ 14. That part of the *proviso* in the second section of the before recited act, which requires suit to be brought to the first court, shall be construed to be, that suits be brought to the first court to which the writ can properly be made returnable.

§ 15. Suits shall be brought on assigned or endorsed obligations, notes, or other contracts in writing, for the payment of money or other thing, when the sum or balance due thereon does not exceed fifty dollars, within thirty days after the same become due and payable, or if endorsed after becoming due, within thirty days after said endorsement; unless the endorser or assignor consent, in writing, that a further time may be given to the maker or obligor; or unless the maker or obligor is absent from the place of his residence, or residence unknown; or unless the assignor or endorser require, in writing, the assignee or endorsee to bring suit immediately after the maturity of said bond, note, or other instrument in writing; or if endorsed after the same become due, immediately thereafter, then and in these cases, the endorsee or assignee shall commence suit within five days thereafter; and no assignor or endorser of any bond, obligation, note, or other writing, shall be liable on said assignment or endorsement, unless suit be brought within the time prescribed by this act, or the act to which this is an amendment.<sup>c</sup>

§ 16. When judgment shall be recovered, either in the circuit or county courts, or before a justice of the peace, by the assignee or endorsee of any assigned or endorsed bond, note, or other writing, and a writ of *fieri facias* shall be returned by the proper officer "no property found," the said assignee or endorsee may commence his action against the assignor or endorser, on said assignment or endorsement, and the return on said *fieri facias* shall be sufficient evidence of the insolvency of the maker or obligor, to authorize a recovery against him, on his said assignment or endorsement.

§ 17. Bonds and other instruments payable in bank, shall be governed by the rules of the law-merchant, as to days of grace, demand,

Sec. 1.  
Days of  
grace, pro-  
test & notice  
on bills and  
notes paya-  
ble in bank:  
Distinction  
of foreign  
and inland  
bills.  
Ib. Sec. 2.  
Assignee's  
rights.

<sup>a</sup> Explained,  
See § 14.  
Assignee to  
sue maker to  
first court, or  
endorser dis-  
charged.  
Days of  
grace, when  
allowed.

<sup>b</sup> See § 17.  
Ib. Sec. 3.  
Notice of  
non-pay-  
ment, when  
required.  
1833—(17)

Sec. 2.  
Explanation  
of § 12.  
Ib. Sec. 3.  
In what time  
assignee  
must sue  
maker, when  
the sum or  
balance does  
not exceed  
fifty dollars.

<sup>c</sup> The prece-  
ding act.  
Ib. Sec. 4.  
On return of  
"nulla bo-  
na" against  
maker, as-  
signee may  
sue assignor.

Return, evi-  
dence of in-  
solvency.

1833—(38)  
Sec. 1.  
Bonds and



other instru- and notice, in the same manner that bills of exchange and notes pay-  
ments paya- able in bank now are.  
ble in bank,  
governed by  
the law-mer-  
chant.

1833—(35)  
Sec. 1.  
[1812—(8)  
See § 6.]  
Act respect-  
ing assign-  
ment of  
notes, &c.,  
explained.  
Proviso.

Further pro-  
viso.

Further pro-  
viso.

§ 18. All the provisions of the first section of the above recited act,<sup>a</sup> shall be construed to extend to and include promissory notes, or other instruments made payable to a certain person or bearer, to a fictitious person or bearer, to a chattel or bearer, or to bearer only, as fully as if the same had been therein mentioned by name: *Provided*, That nothing, herein contained, shall prevent the assignment of said note by delivery merely, so as to authorize the assignee to sue in his own name, subject always to the same payments, discounts and sets-off, that they would be, were they assigned by endorsement as notes, &c. payable to a certain person, or to a certain person or order: *Provided, however*, That nothing, herein contained, shall be construed to extend to bank notes.

NOTE.—For what shall constitute sealed instruments,—See “Conveyances,” § 41.

## OATHS—OFFICIAL.

Con. Ala.  
Art. 6.  
Oath to sup-  
port the con-  
stitution, &c.

§ 1. THE members of the general assembly, and all officers, executive and judicial, before they enter on the execution of their respective offices, shall take the following oath or affirmation, to wit: “I solemnly swear, (or affirm, as the case may be,) that I will support the Constitution of the United States, and Constitution of the State of Alabama, so long as I continue a citizen thereof, and that I will faithfully discharge, to the best of my abilities, the duties of \_\_\_\_\_, according to law: So help me God.”

Con. Sched-  
ule.  
Sec. 9.  
How admin-  
istered.  
1807—(7)  
Sec. 1.  
Persons may  
affirm.

§ 2. The oaths of office, herein directed to be taken, may be administered by any justice of the peace, until the general assembly shall otherwise direct.

§ 3. Every person, appointed to any civil office in this state, conscientiously scrupulous of taking an oath, shall make the following affirmation, previously to entering upon the duties of his office, viz: “I, A. B., being appointed to the office of \_\_\_\_\_, do solemnly, sincerely, and truly declare and affirm, that I will well and truly execute the duties of my said office, according to the best of my skill and understanding, without fraud or partiality; and this I declare and affirm, under the pains and penalties of perjury.”

1819—(1)

Sec. 1.  
Speaker of  
H. of R. to  
administer  
oath to the  
governor.  
Ib. Sec. 2.  
Members of  
the general  
assembly,  
how sworn.  
1830—(23)

§ 4. The oath or affirmation, required by the first section of the sixth article of the constitution of this state, shall be administered to the governor by the speaker of the house of representatives, in presence of both houses of the general assembly.

§ 5. At the first session of the general assembly of this state, after every general election, “the secretary of state, or comptroller of public accounts, or state treasurer, shall administer the oaths of office to the members of both branches thereof: the speaker of the house of representatives shall administer the oath to the clerk, previous to entering on any other business: the president of the senate, for the time being, shall also administer the oath or affirmation to the secretary of the senate, previous to his entering on the duties of his office. And whenever a president of the senate shall be elected, the same oath or affirmation shall be administered to him, by any one of the members of the senate.



§ 6. All officers, elected or appointed, or who shall be elected or appointed, under the authority of this state, shall, before they act in their respective offices, take the oath or affirmation prescribed as aforesaid, which shall be administered by any judge or justice of the peace; the person, so administering the oath hereby required to be taken, shall cause a record or certificate to be made, specifying the day and year the same was taken, which said record or certificate shall be, by said judge or justice, deposited with the clerk of the circuit court of the county in which the same shall have been taken: *Provided*, That the record or certificate of the oath or affirmation, which shall be administered to the secretary of state, attorney-general, solicitors, and judges of the several circuit courts, shall be deposited in the office of the secretary of state.

*Ib. Sec. 3.*  
Oath of other officers, how administered.

Record of oath, where to be deposited.

§ 7. Any officer or officers, failing to comply with the provisions of this act, shall forfeit and pay the sum of five hundred dollars, one-half to the treasury of this state, and the other half to the use of the person who shall sue for the same.

*Ib. Sec. 4.*  
Penalty for not complying with this act.

*Note.*—All public officers are also required to take and subscribe an oath against dueling. See "Penal Law—Dueling." The special oaths, prescribed for those charged with any public service, will be found under the heads in which their general duties are included.

## OIL.

§ 1. ALL oils, sold under the various names of sperm, lamp, summer, fall, and winter oils, shall be deemed and held to be pure sperm oil.

1833—(7)  
*Sec. 1.*  
What deemed sperm oil.

§ 2. The test of pure sperm oil is hereby declared to be Southworth's oleometer; and the same shall be the standard by which the qualities of oils sold within this state shall be ascertained.

Test of sperm oil.

§ 3. All oils, sold under the names of sperm, lamp, summer, fall and winter oils, which shall be adulterated from pure sperm oil, shall be deemed and held whale oil; and any person or persons, who shall sell to any other person or persons, any of the oil or oils, commonly known under the name or names specified in the first section of this act, which have been adulterated by a mixture of whale oil, or inferior oils, shall forfeit and pay to the person or persons buying the same, for each and every such offence, the difference in value, between pure sperm oil and whale oil: and further, the vender or venders of such adulterated oils shall forfeit and pay to the purchaser or purchasers thereof, for every offence, the sum of thirty dollars, together with costs, to be recovered before any justice of the peace within the county, where the offence shall have been committed: *Provided*, *always*, That if, at the time of sale, the vender or venders, disclose to the purchaser or purchasers, the amount of adulteration in the oils sold, then the said vender or venders shall forfeit nothing by the sale of the same.

Penalty for adulterating sperm oil.

*Proviso.*

§ 4. The mayor and aldermen of the city of Mobile, are hereby authorized and empowered to appoint inspectors of oil, and also an inspector of flour, salt, and fish, for the said city of Mobile.

Corporate authorities of Mobile to appoint inspectors of oil, flour, salt, and fish.



## PARTITION.

1803—(4)  
Mode of pro-  
ceeding to  
obtain parti-  
tion of lands.

§ 1. ANY person, being a coparcener, joint-tenant, or tenant in common, in any tract or tracts of land within this state, may, at any time, apply to any one or more of the judges of the circuit courts of this state, or to any judge of the county court, wherein such lands may lie, for a partition of such tract or tracts of land: whereupon, the said judge shall ascertain the number of equal shares or parts, in which such tract or tracts were, or (at the time of such application) are held by the original coparceners, joint-tenants, or tenants in common, and shall nominate three persons, not interested in the said land, as commissioners to make partition of such tract or tracts, into as many parts or shares, as the same was originally held: and the said judge shall, thereupon, order an advertisement to be inserted in one of the public newspapers of this state, and in any such other public newspapers or places, as the judge shall direct, for six weeks successively, to the following or like effect, he or they making such alterations or additions as the nature of the case may require:

Form of no-  
tice by judge.

" By \_\_\_\_\_, esquire, judge of the circuit or county court, (as the case may be) of \_\_\_\_\_ county, notice is hereby given, that on application to me, by \_\_\_\_\_ of \_\_\_\_\_, who claims an undivided \_\_\_\_\_ part of all that tract of land; (giving a description of the tract or tracts of land intended to be divided;) I have nominated A. B., C. D., and E. F., commissioners to divide the said tract or tracts of land, into equal shares or parts; and unless proper objections are stated to me, at \_\_\_\_\_ on the \_\_\_\_\_ of \_\_\_\_\_ next, (*which is to be at least two months from the date of the notice,*) the said A. B., C. D., and E. F., will then be appointed commissioners, to make partition of the said lands, pursuant to law.

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_."

Judges, &c.  
to appoint  
commission-  
ers.

§ 2. If no objections are made before the said judge, on the day appointed by him for the purpose, to the persons nominated as commissioners, then the said judge shall, in writing under his hand and seal, appoint the persons so nominated, to be commissioners to divide the said land, pursuant to the directions prescribed in this act: and the judge shall, in the said writing, describe the tract or tracts to be divided, and direct the number of parts or shares into which the same is to be allotted:—but, if objections are made to the persons nominated as commissioners, or any of them, the said judge shall then proceed to hear and determine such objections; and in case he find them well founded, then to appoint under his hand and seal, other fit and disinterested persons, in the room of those he may think proper to remove.

Commission-  
ers to be  
sworn.

§ 3. The commissioners so appointed, before they proceed to the execution of the powers and authority vested in them by this act, shall be severally sworn or affirmed, before one of the judges of the circuit court, or of the county court, that they will honestly, faithfully, and impartially make the partition intended, and perform the trust, duties, and services, required of them by this act, to the best of their skill, knowledge, and judgment.

Mode of di-  
vision.

§ 4. The commissioners shall cause a survey to be made, in their presence, of the tract or tracts to be divided, and shall then proceed to divide the same into the number of parts or shares, directed by the said judge, in the writing containing their appointment; each part or share to contain one or more lots, as the commissioners may think proper, they having due regard in the partition, to the situa-



tion, quantity, quality, and advantages of each part or share, so that they may be equal in value, as nearly as may be; and if the bounds of any tract or tracts, so to be divided, shall be controverted, the commissioners are hereby directed, if such controverted part is valuable, to separate the same from the uncontroverted part, and to make partition of the tract or tracts in such manner, that a proportion of the controverted part may be allotted to each share, as well as a portion of the uncontroverted part. And the said commissioners, previous to the said survey, shall administer an oath or affirmation to the surveyor and chain-bearers, that they will well and truly perform their respective duties, honestly and impartially: which oath or affirmation any one of the said commissioners is empowered to administer.

Allotments to be made both in controverted and uncontroverted part of tract.

Surveyor & chain-carriers to be sworn.

§ 5. The said commissioners shall number the several parts or shares, by them laid off, from one progressively; and shall, in the same manner, number each lot in the several shares, if the same contain more than one lot; and shall make a true field-book, specifying the bounds and numbers of each lot; and also, a map or maps of the tract or tracts, on which the several shares or lots shall be laid down and numbered; and shall keep an exact and particular account of their time, expended in the execution of the duties of this act, and of the money due for the same: and also, of all expenses accruing for surveying, or otherwise, agreeably to the directions of this act. And the said commissioners shall, thereupon, give notice by advertisement, in manner aforesaid, for three weeks successively, that on a certain day by them named, not less than one month from the date of such notification, attendance will be given, at a place therein mentioned, and an allotment by ballot take place, of the several parts or shares, of the tract or tracts therein described, to the original coparceners, joint-tenants, and tenants in common, their heirs or assigns.

keep account of time and expenses,

and give notice of allotment.

§ 6. On application made to the said judge, by any one of the parties to the partition intended to be made, the said judge shall attend at the time and place specified in the advertisement of the commissioners, and shall, with the assistance of the said commissioners, proceed to allot the several parts or shares of the tract or tracts intended to be divided, in the manner hereinafter to be described. But if no application shall be made to the said judge for his attendance, then the said commissioners shall, on the day appointed for the purpose, proceed in a public manner to number as many tickets as there are shares of land marked on the map; which shall be put into a box, and the names of the original coparceners, joint-tenants, or tenants in common, shall be put in separate tickets, into another box; when a person, appointed by the said judge, or commissioners, shall proceed to draw a ticket of the names, and then a ticket of the numbers, and so proceed until all the tickets are drawn; and the share on the map bearing the number of the ticket drawn, next after drawing the ticket with the name, shall be the separate and divided share of that original coparcener, joint-tenant, or tenant in common, his or her heirs or assigns, in the land so divided: of which balloting, the said judge or commissioners, shall make a full and ample certificate, under his or their hands and seals, specifying particularly the time, place, and manner of balloting, and the said allotment of the shares.

Allotment to be made by ballot.

Mode.

Judge or commissioner to make certificate of allotment.

§ 7. The said judge, or the said commissioners, are hereby authorized, as the case may require, to issue his or their precept, or precepts, under his or their hands and seals, commanding such per-

Precepts for witnesses.



son or persons, who are able to give any necessary information, to come before him or them, when and where he or they may direct, to testify by an oath or affirmation, such acts, matters, or things, as it may be necessary for the said judge, or commissioners, to investigate in execution of the trust, duties, and services, required of them by this act; and to bring with him or them all such patents, surveys, maps, records, deeds, or other writings, as may be necessary to be examined by the said judge, or commissioners.

Instruments  
to be re-  
corded.

§ 8. The commissioners shall transmit the writing containing their appointment, and their oath or affirmation of office, properly certified by the person administering the same, and the map and field-book, and also their accounts, to the judge from whom they received their appointment; or in case of his death, resignation, or removal, then to any other judge of the same court; who, after inspecting the same, shall order the said instruments, excepting the account of expenses, to be recorded in the clerk's office of the circuit court, or in the clerk's office of the county court, in which the lands lie; which shall be good evidence of such partition, and which partition shall be as valid and effectual in law, to divide and separate the said lands, as if the same had been made on writs of partition, according to the course of the common law.

Compensa-  
tion of offi-  
cers.

§ 9. The said judge shall be allowed for the services required by this act, at the rate of two dollars and fifty cents a day, while employed in the said business; and the said commissioners at the rate of two dollars a day, each; and the said surveyor at the rate of four dollars a day; and the chain-bearers and witnesses, at the rate of one dollar a day, each.

In case of va-  
cancy, other  
commission-  
ers may be  
appointed.

§ 10. In all cases of the death, resignation, neglect or refusal of any of the commissioners to be appointed by virtue of this act, before the trust, duties, and services, hereby required of them, shall be completed, then the said judge, or in case of his death, resignation, or removal, any other of the judges shall, by writing, under his hand and seal, appoint another commissioner or commissioners, who shall be vested with the like powers and authority, as if he or they had been originally appointed.

Expenses of  
partition to  
be divided  
among the  
shares.

§ 11. After the said judge shall have ascertained the whole expense of such partition, he shall divide the same among the several parts or shares; which shall be paid by the persons to whom such shares were allotted, their heirs or assigns, within four weeks after the same shall be ascertained; or in default of payment of such expense, the said judge is hereby authorized, where no other property is to be found, to direct a sale to be made by the commissioners, of so much of those parts or shares, deficient in paying the expenses, as will be sufficient to pay their respective proportion thereof; together with the expenses accruing on such sale. And the said judge shall direct the same to be sold by the said commissioners, at public auction, to the highest bidder, whereof four weeks' notice shall be previously given, in one of the said newspapers, and at three of the most public places in the county in which the land lies. And the said commissioners' deed to the purchaser shall pass as good a title for the separate enjoyment of the same, as if all the owners and claimants of shares, of the entire tract divided, had joined therein.

On failure to  
pay propor-  
tion, share  
may be sold.

Commission-  
ers' deed to  
convey title.

Proceedings  
under this  
act not to  
affect para-  
mount title.

§ 12. Nothing, in this act contained, shall be so construed as to tend to injure, prejudice, defeat, or destroy, the estate, right, or title of any person or persons claiming such tract or tracts of land, or any part thereof, or anything therein by title paramount or superior to



the title of such coparceners, joint-tenants, or tenants in common, among whom partition is to be made.

§ 13. When any person, by last will and testament, shall devise his or her real estate, or any part thereof, to two or more devisees, not ascertaining the metes and boundaries of each devisee's share, any of whom being under age, and their shares being undivided, such devisees may apply to the orphans' court of the county in which the said last will and testament was proved and recorded; and the said court, on application of any one of the said devisees, may order a division thereof to be made, agreeably to the true intent and meaning of the said last will and testament; and each devisee's share shall be ascertained by three or five indifferent freeholders, appointed by the court, and a report made thereupon by them, or a majority of them, under their hands and seals, to the next orphans' court, after such division shall be made; such report, being approved by the said court, and entered on the records thereof, shall be conclusive to all parties concerned. And when the real estate of any person dying intestate, shall descend to two or more children, or other heirs of such intestate, one or more of whom being under age, the said court, on application, may order and direct a division of such real estate agreeably to the law of descents; the metes and bounds of each heir's share to be ascertained by three or five indifferent freeholders, appointed as aforesaid, and whose report, or that of a majority of them, returned, approved, and recorded, as aforesaid, in case of devisees, shall be conclusive on all parties concerned: *Provided*, That, in each case, the report of the said freeholders shall be returned under oath; *And provided, also*, That the devisees or heirs in this state, or the guardians of such as are under age, not applying for such division, shall have such notice of the time and place of the meeting of the said freeholders, for the purpose of making the said division, as the court shall direct.

1806—(1)  
Sec. 43.  
Mode of obtaining partition of a joint devise, &c., one of the devisees or heirs being under age.

Provisos.

## PARTNERSHIPS—LIMITED.

§ 1. Limited partnerships, for the transaction of any mercantile, mechanical, or manufacturing business, within this state, may be formed by two or more persons, upon the terms, and with the rights and powers, and subject to the conditions and liabilities, herein prescribed, but the provisions of this act shall not be construed, to authorize any such partnership for the purpose of banking or making insurance.

1837—(30)  
Limited partnerships authorized.

§ 2. Such partnerships may consist of one or more persons, who shall be general partners, and who shall be, jointly and severally, responsible as general partners now are by law; and of one or more persons who shall contribute, in actual cash payments, a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership, beyond the fund so contributed by him or them to the capital.

May be general partners, as well as those of limited liability.

§ 3. The general partners, only, shall be authorized to transact business and sign for the partnership and to bind the same.

Former only to bind firm.

§ 4. The persons desirous of forming such partnership, shall make and severally sign a certificate, which shall contain, first, the name or firm under which such partnership is to be conducted; second, the general nature of the business intended to be transacted; third,

Certificate of partnership to be signed by each partner.



What it shall contain. the names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence; fourth, the amount of capital which each special partner shall have contributed to the common stock; fifth, the period at which the partnership is to commence, and the period at which it will terminate.

To be acknowledged before a judge and certified. § 5. The certificate shall be acknowledged, by the several persons signing the same, before a judge of the supreme court, a circuit judge, or a judge of the county court; and such acknowledgment shall be made and certified, in the same manner as the acknowledgment of conveyance of land.

To be recorded in office of county court clerk, &c. § 6. The certificate, so acknowledged and certified, shall be filed in the office of the clerk of the county court of the county in which the principal place of business of the partnership shall be situated, and shall also be recorded by him at large in a book to be kept for that purpose, open to public inspection. If the partnership shall have places of business situated in different counties, a transcript of the certificate and of the acknowledgment thereof, duly certified by the clerk in whose office it shall be filed, under his official seal, shall be filed and recorded, in like manner, in the office of the clerk of the county court of every such county.

Affidavit to be also filed by one or more of general partners. § 7. At the time of filing the original certificate with the evidence of the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners, shall also be filed in the same office, stating, that the sums, specified in the certificate to have been contributed by each of the special partners to the common stock, have been actually, and in good faith, paid in cash.

Partnership not formed till certificate &c. are filed and recorded. § 8. No such partnership shall be deemed to have been formed, until a certificate shall have been made, acknowledged, filed and recorded; nor until an affidavit shall have been filed, as above directed; and if any false statement be made in such certificate or affidavit, all the persons, interested in such partnership, shall be liable for all the engagement thereof, as general partners.

Terms of partnership to be published. § 9. The partners shall publish the terms of the partnership, when registered, for at least six weeks, immediately after such registry, in two newspapers, to be designated by the judge of the county court in which such registry shall be made; and if such publication be not made, the partnership shall be deemed general.

Printers' affidavits filed with clerk. § 10. Affidavits of the publication of such notice, by the printers of the newspapers, in which the same shall be published, may be filed with the clerk of the county court whose judge directed the same, and shall be evidence of the fact therein contained.

Every renewal of partnership to be certified, &c. § 11. Every renewal or continuance of such partnership, beyond the time originally fixed for its duration, shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice be given, in the manner herein required for its original formation; and every such partnership, which shall be otherwise renewed or continued, shall be deemed a general partnership.

Every alteration of names, &c. a dissolution, unless, &c. § 12. Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership, and every such partnership, which shall, in any manner, be carried on after such alteration shall have been made, shall be deemed a general partnership, unless renewed as a special partnership, according to the provisions of the last section.



§ 13. The business of the partnership shall be conducted under a firm, in which the names of the general partners only shall be inserted, without the addition of the word "company," or any other general term; and if the name of any special partner shall have been used in such firm, with his privity, he shall be deemed a general partner.

Under what firm business shall be conducted.

§ 14. Suits in relation to business of the partnership may be brought and conducted by and against the general partner, in the same manner as if there were no special partners.

Suits, how brought.

§ 15. No part of the sum, which any special partner shall have contributed to the capital stock, shall be withdrawn by him, or paid or transferred to him, in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits remain to be divided, he may also receive his portion of such profits.

No part of capital stock of special partner to be withdrawn, &c.

§ 16. If it shall appear, that, by the payment of interest or profits to any special partner, the original capital has been reduced, the partner, receiving the same, shall be bound to restore the amount necessary to make good his share of capital, with interest.

If he do withdraw any portion, to restore, &c.

§ 17. A special partner may, from time to time, examine into the state and progress of the partnership concerns, and may advise as to their management, but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent or otherwise; and if he shall interfere contrary to these provisions, he shall be deemed a general partner: *Provided*, That the attention of the special partner as attorney or counsel at law, shall not be considered such interference as to constitute him a general partner.

He may examine into partnership concerns, but not transact business.

§ 18. The general partners shall be liable to account to each other and to the special partners, for their management of the concern, both in law and equity, as other partners now are by law.

Partners, to account in law and equity.

§ 19. Every partner, who shall be guilty of any fraud in the affairs of the partnership, shall be liable civilly to the party injured, to the extent of his damage; and shall also be liable to an indictment for a misdemeanor, punishable by fine and imprisonment or both, in the decision of the court by which he shall be tried.

Guilty of fraud, how liable.

§ 20. Every sale, assignment or transfer of any of the property or effects of such partnership, made by such partnership, when insolvent or in contemplation of insolvency, or after or in contemplation of the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolvent partner, over other creditors of such partnership, and every judgment confessed, lien, credit, or security given, by such partnership, under the like circumstances and with the like intent, shall be void, as against the creditors of such partnership.

Partnership to give no preference to one creditor over another.

§ 21. Every such sale, assignment or transfer, of any of the property or effects of a general or a special partner, when insolvent or in contemplation of insolvency, or after or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own or of the partnership, a preference over creditors of the partnership, and every judgment confessed, lien created, or security given, by any such partner under the like circumstances, and with the like intent, shall be void, as against the creditors of the partnership.

Any sale, assignment, &c. made for such purpose, void.

§ 22. Every special partner, who shall violate any provision of Special part.



ner, violating § 20, 21, how liable.

the two last preceding sections, or who shall concur in, or assent to, any such violation by the partnership, or by any individual partner, shall be liable as a general partner.

To be postponed to all other creditors of firm.

§ 23. In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed a claim as a creditor, until the claims of all the other creditors of the partnership shall be satisfied.

Partnership, how dissolved, before its own limitation.

§ 24. No dissolution of such partnership, by the acts of the parties, shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the clerk's office in which the original certificate was recorded, and published once in each week for four weeks, in a newspaper printed in each of the counties where the partnership may have places of business: *Provided*, One be printed in said county, and also in one other paper published at the seat of government in the state.

## PATROLS.

1819—(18) Who liable to do patrol duty.

§ 1. EVERY male owner of slaves, and all other persons below the rank of ensign, liable to perform military duty, are hereby declared liable to perform patrol duty, as hereinafter directed; but shall be at liberty to send a substitute to perform said duty in their stead.

Duties of patrol detachments.

§ 2. It shall be the duty of each patrol detachment, to visit all negro quarters, all places suspected of entertaining unlawful assemblies of slaves or other disorderly persons unlawfully assembled; and, upon finding such disorderly person or persons, to take him, her, or them, if free, before the nearest justice of the peace of such county, or make report thereof to said justice, so that he, she, or they, may be dealt with according to law; and if any slave or slaves shall be found so assembled, or strolling without a pass, or some token from his or her owner or overseer, the said patrol may give any such slave any number of lashes, not exceeding fifteen; and if there be reason to suspect any such slave or slaves to be runaway from his or her owner, they shall take such slave or slaves before the nearest justice of the peace for such county, to be dealt with according to law, and be allowed and paid by the owner, for all runaway slaves so taken up, the sum of ten dollars, and shall also be entitled to receive all other fines to which parties may be liable, which they may bring before any jurisdiction having cognizance thereof.

Runaway slaves.

Fines appropriated to patrol.

Leader of patrol to give notice of time and place of meeting to patrol.

Defaulters, how punished.

§ 3. The officer or leader of every patrol detachment, shall give notice to every person thereto belonging, of the time and place of meeting to patrol; and every person, who, after such notice, shall fail to attend or send a substitute in his place, or shall, after attendance, neglect a faithful performance of patrol duty, shall be returned by the patrol officer or leader, to the captain in whose bounds he may reside; and should the said defaulter, so returned, be subject to do militia duty, the captain shall return said defaulter to the next court-martial, who shall be fined at the discretion of the court-martial, in any sum not exceeding ten dollars; one-half thereof shall, when recovered, accrue to the said officer or leader, and the other half there-



of to the other persons who shall have performed patrol duty, in the detachment wherein the default shall have occurred; but should the defaulter, so returned to the captain, not be subject to do militia duty, the captain shall forthwith return said defaulter to some justice of the peace for said county, who shall issue his warrant within ten days thereafter, requiring such defaulter to appear before him; and in case the said defaulter shall not appear before him, it shall then be the duty of the said justice, on proof of service of the process, and on proof of the service of the notice required by the preceding part of this section, of the time and place of meeting to patrol, to give judgment and issue execution against the said defaulter, for the sum of five dollars with costs, to be distributed as before named in this section: *Provided*, That if a sufficient excuse be given to the said justice or court-martial, if such excuse be given at the hearing, then the said justice or court-martial shall not give judgment; nevertheless, the said defaulter shall pay costs.

§ 4. If any commanding officer, constable, patrol-man, or other person, shall be sued, arrested, or impleaded, for any matter or thing which he shall do or cause to be done, by virtue of, or in pursuance of this act, it shall be lawful for every such captain or other officer or person, to plead the general issue, and give this act and the special matter in evidence on the trial; and if a verdict shall pass against the plaintiff or plaintiffs, or if they shall be nonsuited in his or their action or suit, the court, where such action shall be pending, shall tax and allow the defendant, his or their double costs, in every such suit or action.

§ 5. If any of the patrols as aforesaid, under this act, should receive any information of any person or persons harboring any negro or negroes, or slaves, belonging to any other person or persons whatsoever, they shall immediately, on receiving any such information, summon together their patrols, and go immediately in search of said negroes, and if found, take them forthwith to the nearest justice of the peace: and if no owner comes and claims said slave or slaves, it shall be the duty of said justice to commit such slave or slaves to the common jail of the county.

§ 6. Any person, interested in any of the forfeitures prescribed by this act, or by the act to which this is an amendment, shall be a competent witness in any suit for any of the said forfeitures.<sup>1</sup>

§ 7. It shall be the duty of justices of the peace, to appoint and regulate patrol detachments in their respective beats throughout this state; and it shall be the duty of the justices of the peace in each beat, to meet once in each and every year, (which shall be done within the first week of March of each year,) and make a complete list of all male owners of slaves, of every age, and all other persons liable to patrol duty; which list they shall divide into patrol detachments, consisting of not less than three, nor more than five men, beside their leader—appointing some discreet person as leader of each detachment; and the detachments, so appointed, shall be compelled to perform patrol duty according to the patrol laws now in force in the state, but shall have the privilege of sending a substitute.

<sup>1</sup> The sections inserted from the act of Dec. 18, 1812, allude to duties and forfeitures contained in that and a prior act, all of which, with a modification as to form only, are incorporated in the act of Dec. 17, 1819, which forms the body of this title.



*Ib. Sec. 2.*

Constable shall summon leader of patrol.

§ 8. It shall be the duty of the justice of the peace, immediately upon making out the list of patrol detachments, in each and every year, to furnish the constable of the beat to which they belong, a copy of the list of patrol detachments, setting forth the leader of each detachment, and the name of each patrol-man belonging to his detachment, and the time at which each leader shall commence his tour of duty; and it shall, thereupon, be the duty of the constable, to serve a notice on each leader in writing, setting forth the name of each man in the detachment, and the time at which each leader shall commence duty—which notice shall be lawful, if left at the house of each leader ten days before the time at which he is to commence duty: *Provided*, That when any leader of a patrol detachment shall be sick or absent, it shall be the duty of the justice of the peace, to designate some other person as leader of such detachment, who shall be notified in like manner, and subject to the same liabilities and penalties that other leaders of patrol detachments are: *Provided*, That after the two justices of the peace shall have met and designated the patrol detachments, as required by this act, the senior justice of the peace shall take charge of the papers, and, thereafter, perform the duties of issuing notices; *And provided, further*, That when there is but one justice of the peace in a beat, such justice shall, at all times, be authorized to perform the duties required of justices of the peace by this act.

*Ib. Sec. 3.*  
Leader of patrol to take oath.

§ 9. It shall be the duty of justices of the peace, to cause each patrol leader to appear before him, and take an oath faithfully to discharge the duties required of him by law as such, which notice shall be served by the constable of the beat; and constables, for performing the duties required of them by this act, shall be exempt from working on roads and serving on juries.

*Ib. Sec. 4.*  
Fines against justice, constable, patrol leader &c., for neglect of duty.

§ 10. Every justice of the peace, for failing to enforce the performance of patrol duty in his beat, and perform the duties required of him or them, shall be subject to a fine of fifty dollars, recoverable on motion in the circuit court. Every constable, who may fail or refuse to perform the duties required of him under this act, shall be fined twenty-five dollars, recoverable before a justice of the peace. Every leader of a patrol detachment, failing or refusing to perform the duties required of him by law, shall be fined ten dollars, recoverable before a justice of the peace: and every leader of a patrol detachment shall return all defaulters in his detachment before a justice of the peace in the beat to which he belongs, and such justice of the peace shall, thereupon, issue his warrant to the constable of the beat, to summon all such defaulters before him, or some other justice of the peace in the beat, and the justice, trying such defaulters, shall fine them according to law, and issue execution for such fine and costs, which shall be collected by the constable of the beat, and the justice of the peace and constable shall be allowed such fees as the law allows them for like services in other cases.

Fees of justice and constable.

*Ib. Sec. 5.*  
Penalty for failing to pay over, &c.

§ 11. Every justice of the peace and constable, for failing to pay over and account for moneys by them collected under this act, agreeably to law, shall be subject to such liabilities and penalties as they are for failing to return other moneys collected by them in their official capacities.

*Ib. Sec. 6.*  
Justice to enforce performance of patrol duty.

§ 12. It shall hereafter be the duty of justices of the peace, to enforce the performance of patrol duty in their respective beats; and all justices of the peace, hereafter elected, when taking the oaths of



office, are hereby also required to take an oath to enforce the performance of patrol duty in their respective beats.

§ 13. Owners of slaves, over the age of forty-five years, shall not be liable, or required to perform the duties of leaders or captains of a patrol squad, or company.

1839—(29)  
Sec. 1.  
Owners of  
slaves over  
45 years, not  
required to  
be patrol  
leaders.

NOTE.—By the first section of "An Act to alter and amend the patrol laws now in force, in the counties therein named," approved June 29th, 1837, the above law, of January 1st, 1836, has been modified as regards those counties, as follows: "Justices of the peace, in their respective beats, in the counties of Jackson, Marshall, DeKalb, Henry, Benton, Blount, St. Clair, Madison, Cherokee, Bibb, Marion, Covington, Dale, Morgan, Limestone, Lauderdale, Walker, Lawrence, Fayette and Talladega, shall be authorized and empowered to organize and order out patrol detachments, only when, in their opinion, the same may be necessary, and no other patrol duty shall be required by law in said counties: *Provided*, The said justices shall, in no instance, order the performance of more patrol duty than is now required by law."

A law precisely similar, as regards Franklin, Dale and Shelby, was passed Dec. 2d, 1837.

## PENAL CODE.

### CONSTITUTIONAL PROVISIONS.

§ 1. IN all criminal prosecutions, the accused has a right to be heard by himself and counsel; to demand the nature and cause of the accusation, and have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and in all prosecutions, by indictment or information, a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed: he shall not be compelled to give evidence against himself, nor shall he be deprived of his life, liberty, or property, but by due course of law.

Con. Ala.  
Art. 1.  
Sec. 10.  
Rights of the  
accused in  
criminal  
cases.

§ 2. No person shall be accused, arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished, but in virtue of a law, established and promulgated prior to the offence, and legally applied.

Ib. Sec. 11.  
No person  
accused, &c.  
except by  
law.

§ 3. No person shall, for any indictable offence, be proceeded against criminally, by information; except in cases arising in the land and naval forces, or the militia when in actual service, or, by leave of the court, for oppression or misdemeanor in office.

Ib. Sec. 12.  
Indictable of-  
fences, how  
proceeded  
against.

§ 4. No person shall, for the same offence, be twice put in jeopardy of life or limb.

Ib. Sec. 13.  
No person  
twice tried.

§ 5. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Ib. Sec. 16.  
Bail, fines  
and punish-  
ments.

§ 6. All persons shall, before conviction, be bailable by sufficient securities, except for capital offences, when the proof is evident, or the presumption great; and the privilege of the writ of "*habeas corpus*" shall not be suspended, unless when, in cases of rebellion, or invasion, the public safety may require it.

Ib. Sec. 17.  
Bailable of-  
fences.  
*Habeas cor-  
pus.*

§ 7. No person shall be attainted of treason or felony by the general assembly. No attainder shall work corruption of blood, nor forfeiture of estate.

Ib. Sec. 20.  
Attaints.



Art. 5.  
Sec. 17.  
Style of pro-  
cess.

§ 8. The style of all process shall be "The State of Alabama," and all prosecutions shall be carried on in the name, and by the authority of the State of Alabama, and shall conclude "against the peace and dignity of the same."

Art. 6.  
Sec. 2.  
Treason.

§ 9. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

*Ib.* Sec. 14.  
Prosecutions  
for libel.

§ 10. In prosecutions for the publishing of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts under the direction of the courts.

*Ib.* Sec. 19.  
Penal code.

§ 11. It shall be the duty of the general assembly, as soon as circumstances will permit, to form a penal code, founded on principles of reformation, and not of vindictive justice.

#### ADOPTION OF PENITENTIARY SYSTEM.

1841—(11)  
Penal code  
adopted.

§ 1. *Be it enacted, &c.* That, for the government and management of the penitentiary of this state, and to adapt our criminal proceedings and punishments to such system, the provisions, contained in the following fifteen chapters, are hereby adopted and made of force, as a part of the laws of this state, to have effect and force as therein prescribed.

### CHAPTER I.

#### OF THE ORGANIZATION OF THE PENITENTIARY.

##### 1. *Officers of the Penitentiary—their appointment, &c.*

Organization  
of peniten-  
tiary.

§ 1. The organization of the penitentiary shall include three inspectors, one warden, one deputy-warden, one physician, one clerk, and such number of overseers or turnkeys, as the inspectors may, from time to time, deem necessary.

Warden and  
inspectors,  
how elected.  
Term of  
office.

§ 2. The warden and inspectors shall be elected by joint vote of the two houses of the general assembly, and shall hold their offices for the space of two years, and until their successors are elected and qualified.

Clerk and  
physician  
appointed by  
inspectors.

§ 3. The clerk and physician shall be appointed by the inspectors, and commissioned to hold their offices during the pleasure of the said board of appointment, and the said clerk and physician shall be subject to be removed by the general assembly.

Deputy-warden  
and all  
officers ap-  
pointed by  
warden.

§ 4. The deputy-warden, and all officers of the penitentiary, shall be appointed by the warden, and shall hold their offices during the pleasure of the inspectors; but if the warden shall think any such officer ought to be removed, and the inspectors shall not consent thereto, the warden may appeal to the governor, who, after reasonable notice to the inspectors, if he believe just cause of complaint exists, may make such removal.

Warden to  
report to in-  
spectors offi-  
cers appoint-  
ed.

§ 5. The warden shall report immediately to the inspectors all appointments of officers which he shall make: he shall, from time to time, propose, in writing, to the inspectors, such alterations as



he may think advisable, in the rules and regulations for the direction of the officers, and for the government of the penitentiary.

§ 6. The officers of the penitentiary shall receive the following salaries, to wit: the warden, two thousand dollars; the deputy-warden, one thousand dollars; the physician, five hundred dollars; the clerk, seven hundred dollars; the turnkeys, each, five hundred dollars; all of which sums, shall be paid in quarterly payments, by the warden, out of the treasury of the penitentiary, and shall be in full for all services; and no other perquisite, reward or emolument, shall be allowed to, or received by any of them: *Provided*, That the warden shall not appoint a deputy-warden, until his services shall be rendered necessary, by the number of inmates of the penitentiary. Salaries of the officers.  
Deputy warden to be appointed when necessary.

§ 7. The pay of the inspectors of the penitentiary shall be three dollars per day, each, and no more, for every day's service actually and necessarily rendered, in conformity with the provisions of the law defining the duties of inspectors, to be audited and paid out of the treasury; and no mileage shall be allowed to any inspector for traveling to and from the penitentiary, and the sum allowed to the board shall not exceed six hundred dollars in any one year. [1841—(11) Sec. 7, and 1843—(42) Sec. 1, consolidated.] Compensation of inspectors.

§ 8. There shall be maintained at the penitentiary a guard, to be employed by the wardens thereof, to consist of one sergeant, and as many privates, not exceeding twelve, as the inspectors of the penitentiary may, from time to time, direct; the guard shall be furnished from the arsenal of this state, with sufficient arms and accoutrements, and shall be subject to the command and direction of the warden of the penitentiary, who may dismiss, at pleasure, any of them; the sergeant shall receive not exceeding three hundred dollars per annum, and each of the guard not exceeding two hundred and fifty dollars, besides rations, to be established by the board of inspectors. Guard employed by warden.  
Armed from state arsenal.  
Compensation.

§ 9. The warden, deputy-warden, and other officers, except the sergeant and guard, of the penitentiary, shall support themselves from their own resources, and shall not receive any emoluments or perquisites for their services, other than the compensation provided in this title. Officers, except sergeant and guard to support themselves, &c.

§ 10. The warden, deputy-warden, overseers, turnkeys, sergeant and watchmen, shall, before they enter upon the duties, of their respective offices and appointments, take and subscribe, before some justice of the peace or other officer authorized to administer the same, the oath of office prescribed in the constitution for public officers, and in addition thereto, shall take and subscribe the following oath: Warden and other officers &c. to take oaths.

"I do solemnly swear (or affirm) that I will faithfully and diligently execute all the duties required of me, as \_\_\_\_\_, in the penitentiary of the State of Alabama; and will carry into execution the laws and regulations passed and prescribed for the government of said institution, as far as concerns my office, (or appointment); I also swear (or affirm), that I will, on no occasion, ill-treat, or abuse any convict under my care, or over whom I have any control, beyond the punishment ordered by law, or the rules and regulations of the institution."



## 2. Powers and Duties of Officers.

Inspectors to choose a president.  
His powers and duties.

§ 11. The board of inspectors shall, from time to time, choose one of their number to be their president, who shall preside at their regular meetings, and whenever, in his opinion, the exigency requires it, shall convene the board; they shall cause the clerk of the penitentiary to keep a regular minute of their meetings and proceedings, which shall be signed by them, and preserved in the penitentiary.

To establish rules and regulations.

§ 12. The inspectors shall, from time to time, establish rules and regulations consistent with the laws of the state, for the direction of the officers of the penitentiary in the discharge of their duties; for the government, employment and discipline of the convicts; and for the custody and preservation of the public property; and, as soon as may be, after the establishment of any such rules and regulations by the inspectors, they shall cause authentic copies thereof to be laid before the governor, who may approve, annul or modify the same; and the inspectors shall cause a copy of all such rules and regulations, as shall have been approved by the governor, to be certified as soon as may be, by the clerk of the penitentiary, and delivered to the warden.

One to visit the penitentiary once a week.  
The board, once a month

§ 13. The inspectors, or one of them, shall visit the penitentiary at least once in each week; and it shall be visited by the board of inspectors once a month, and oftener, if they shall think it necessary, for the purpose of inspecting the books, and all the concerns of the prison, and ascertaining whether the laws, and the rules and regulations relating to the prison, are duly observed, and whether the officers are competent and faithful, and the convicts are properly governed and employed. \*And it shall be the duty of the clerk of the penitentiary to note the failure of any inspector to attend the regular monthly meetings of the board of inspectors, and if any inspector shall fail to attend at three successive monthly meetings of the board, (unless such failure shall be caused by sickness,) his office shall be considered as vacated; and it shall be the duty of the clerk of the penitentiary to notify the governor thereof; and the governor shall fill said vacancy by appointment, as in case of resignation, and the inspector so appointed, shall hold his office until the expiration of the next succeeding session of the legislature.

[a1843—(42)  
Sec. 2.]  
Duty of clerk when inspector absents himself from monthly meeting, and penalty on latter.  
Governor to fill vacancy.

To report to the governor all violations of law and duty.  
To remove unfaithful officers.  
To transmit to governor, annually, a report of the transactions, &c. during preceding year.

§ 14. The inspectors shall report to the governor forthwith, all violations of law and omissions of duty by the warden, that shall come to their knowledge; and every officer who holds his place at the pleasure of the inspectors, who shall be found unfaithful or incompetent, shall be, by them, forthwith removed.

§ 15. The inspectors of the penitentiary shall, at least fifteen days previous to the first day of December, in each year, transmit to the governor a report, exhibiting a complete and comprehensive view of the transactions of the penitentiary, during the preceding year; of the number of convicts confined therein, the offences for which committed, and their respective periods of imprisonment, their ages, sizes, previous occupation, profession or employment, and where born; the report shall also state the number of convicts who have been pardoned, discharged, or died during the year, stating the date of their conviction, and of their pardon, discharge, or death, the period of time for which they were sentenced, the counties in which they were convicted, their age, sex and color, the deportment of each of the convicts while in the penitentiary, and in case of death, the particular disease of which the convict was supposed to have died.



§ 16. The inspectors of the penitentiary may remove the convicts therein, to such place or places of security within the state, as they may deem expedient, if, in their opinion, the prevalence of any epidemic, infectious, or contagious disease, or other urgent occasion, shall render such a measure necessary and proper.

May remove convicts to other places of security, when, &c.

§ 17. The penitentiary shall be visited by the governor, annually, and as much oftener as his excellency may think proper, for the purpose of examining its condition.

Governor to visit penitentiary.

§ 18. Before the warden enters upon the duties of his office, he shall give bond to the state, in the sum of twenty thousand dollars, with sufficient sureties, to be approved by the governor, with condition that he shall faithfully account for all moneys placed in, or otherwise coming to his hands as treasurer, and perform all the duties incumbent on him as warden of the penitentiary; and such bond shall be filed in the office of the secretary of state, and may, from time to time, be put in suit, against any one or more of the obligors, and shall not become void on the first recovery, nor until the whole penalty shall be exhausted.

Warden to give bond, with security, in the sum of \$20,000.

§ 19. The warden and deputy-warden shall reside constantly within the precincts of the penitentiary, and both shall not be absent therefrom at the same time; and neither the warden, nor any person appointed by the warden, shall, during the time of holding his office, be employed in any business for private emolument not pertaining to his office: *Provided*, That it shall be lawful for the warden or deputy-warden to engage in agricultural pursuits to such extent as not to interfere with his public duties.

Warden and deputy-warden to reside within precincts of penitentiary.

§ 20. The warden shall have the charge and custody of the penitentiary, with the lands, buildings, furniture, tools, implements, stock, provisions, and every other species of property within the precincts thereof, or appertaining thereto; he shall be treasurer of the penitentiary, and shall receive and pay out all moneys granted by the legislature, (if any) for the support thereof, and shall cause to be kept in suitable books, regular and complete accounts of all the property, expenses, income, business and concerns of the establishment; and all the books and documents, relating to the concerns of the penitentiary, shall, at all times, be open to the examination of the inspectors, who shall, semi-annually, or oftener, if they think necessary, carefully examine the said books, and compare them with the vouchers and documents relating thereto.

Warden to have the charge and custody of penitentiary, &c. To be treasurer.

§ 21. It shall be the duty of the warden to examine daily into the state of the penitentiary, and the health, conduct and safe keeping of the convicts, to use every proper means to furnish them with employment, to superintend all the manufacturing and mechanical business of the penitentiary, to receive the articles so manufactured, and to sell and dispose of the same for the benefit of the state.

Warden to examine, daily, state of penitentiary, &c.

§ 22. Whenever the inspectors shall so direct, it shall be the duty of the warden to make contracts, from time to time, for the labor of the convicts, with such persons and upon such terms, as may be deemed most beneficial for the state; all contracts, so to be made, shall be reduced to writing, and a counterpart of every such contract shall be filed with the clerk of the penitentiary, and a copy thereof shall be delivered to the inspectors.

Contracts for labor of convicts.

How made.

§ 23. It shall be the duty of the warden, to enforce the payment of all debts due to the penitentiary, as soon and with as little expense to the state as possible, but he may, with the approbation of

Warden to enforce, payment of debts



the inspectors, accept of such security from any debtor, on granting time, as may be conducive to the interest of the state.

Moneys-received by him, where deposited. To be drawn on his check, &c.

§ 24. All moneys, received by the warden of the penitentiary, on account thereof, shall be deposited by him in the Branch of the Bank of the State of Alabama, at Montgomery, subject to be drawn therefrom upon his own check, to meet all proper, just, and legal charges upon the treasury of the penitentiary, and no officer or other person, whatsoever, shall, on any pretence, use the funds of the same, except for the purposes prescribed by law.

To close and settle acc'ts 1st October, annually. Accounts to be audited & settled by comptroller.

§ 25. The warden shall, as soon as may be, after the first day of October in each year, cause to be made, full and detailed accounts, to be closed on that day, of all the disbursements and expenses, and all the receipts and profits of the prison, accompanied by sufficient vouchers, which accounts, after having been examined and approved by the board of inspectors, shall be audited and settled by the comptroller of public accounts, who shall file the same in his office, and accompany his annual report to the legislature, with an abstract thereof.

Subordinate officers to perform duties required by ward. en.

§ 26. The deputy-warden, clerk, the overseers and turnkeys, shall perform such duties in the charge and oversight of the penitentiary, the care of the property thereto belonging, and the custody, government, employment and discipline of the convicts, as shall be required of them by the warden, in conformity to law and the rules and regulations of the penitentiary.

When office of warden is vacant, deputy to perform its duties.

§ 27. Whenever the office of warden shall be vacant by death, resignation, or otherwise, the deputy-warden shall have all the powers, and perform all the duties of warden, until one shall be appointed and qualified; and such deputy, in such event, shall be subject to all the obligations and liabilities imposed by law on the warden; no deputy-warden shall be permitted to enter on the duties of his office, until he shall enter into bond, with sufficient sureties, to be approved by the board of inspectors, in the sum of twenty thousand dollars, conditioned to perform all the duties of deputy-warden, and faithfully account for all moneys or effects which shall come to his hands, in the event of a vacancy in the office of warden, by the death or resignation of the warden or otherwise, during the continuance of such deputy warden in office, and the governor may fill any vacancy which may occur, not herein otherwise provided for.

Deputy to give bond with securities.

Duty of physician to visit hospital, &c.

§ 28. The physician shall visit the hospital of the penitentiary, at least every other day, and as much oftener as may be necessary, prescribe for convicts that may be sick, and attend to the regimen, clothing, and cleanliness of such of them as are in the hospital; he shall keep a regular journal, which shall remain at the penitentiary, of all admissions to the hospital, stating the time, the nature of the disease, with his prescriptions, and the treatment of each patient, and the time of his discharge from the hospital, or his death; the said journal shall also contain regular entries of all orders that shall be given for supplies for the hospital department, specifying the articles ordered; all such orders shall be in writing, and the warden shall provide the supplies so ordered, under the direction of the inspectors.

To keep a journal.

To keep a register of convicts, open to inspection.

§ 29. It shall be the duty of the physician of the penitentiary, to keep a register of all the convicts under his charge, stating the diseases with which they may be afflicted, and the state of their health on entering and leaving the hospital, and the cause of disease, when the same can be ascertained; and, also, a register of all infirm convicts, stating their names, ages, places of birth, and the particular in-



firmity of each ; and such register shall always remain in the hospital, open to inspection.

§ 30. Whenever any convict shall complain of such illness as requires medical aid, notice shall be given to the physician, who shall visit such convict, and if, in the opinion of the physician, the illness is such as requires his removal to the hospital, the warden may order such removal ; and the convict shall remain in the hospital, until the physician shall determine that he may leave it without injury to his health.

§ 31. Whenever the physician of the penitentiary shall report to the warden, that any convict confined therein is insane, it shall be the duty of the warden, to cause such insane convict, to be removed to the hospital for maintenance, until the expiration of the term for which he shall be sentenced, if he shall so long continue insane ; and if such insane person shall recover from his insanity, before the expiration of the term for which he was sentenced, the warden shall cause him again to enter on his regular labor as a convict.

§ 32. It shall be the duty of the commissioners of the penitentiary, as soon as practicable hereafter, to cause to be erected under their inspection, within the walls of the penitentiary, a substantial building, suitable for a hospital, which shall be of such dimensions, and upon such plan, as may seem to the commissioners best calculated to promote the comfort of the sick, and contribute to their safety ; the expense of erecting said building shall be defrayed from the appropriation heretofore made, for the purpose of carrying into effect the provisions of an act to establish a state prison and penitentiary, or that may hereafter be made for that purpose : *Provided, however,* That the plan agreed upon by the commissioners, shall be subject to modification by the governor.

§ 33. The inspectors, and all persons holding offices or appointments in the penitentiary, shall be exempted, during their continuance in office, from serving on juries, from militia duty and from working on the public roads.

§ 34. The principal articles, purchased for the use of the penitentiary, such as the rations and fuel, with their transportation, shall be contracted for by the year, when such contracts can be advantageously made ; and the warden shall give previous public notice, in two newspapers at least, in this state, of the articles wanted, the quantity and quality thereof, the time and manner of delivery, and the period during which proposals therefor will be received, and such notice shall be published a sufficient length of time, for the information of persons who may probably be desirous to offer proposals for such contracts.

§ 35. All such proposals shall be in writing, and sealed up ; and on the day appointed, they shall be opened by the warden in presence of the inspectors, who shall cause all such offers to be entered in a book and compared ; the person offering the best terms, with satisfactory security for the performance, shall be entitled to the contract ; unless it shall appear to the warden and inspectors, that none of the offers are as low as the fair market price ; in that case, no offer shall be accepted, and the warden, with consent of the inspectors, may advertise again as before, or he may proceed to make contracts for any of the articles wanted for the penitentiary, in the best way he can for the interest of the state, without further notice.

§ 36. Every such contractor shall give bond in a reasonable sum, with satisfactory surety or sureties for the performance of his con-

To be notified of illness of convicts—may order removal to hospital, &c.

Treatment of insane convicts.

Hospital to be erected within the walls of the penitentiary.

Expense, how defrayed.

Proviso.

Officers of penitentiary exempt from juries, militia duty &c.

Certain articles for use of penitentiary contracted for by the year. Proposals, how published.

Proposals for such contracts, how made.

How acted upon.

Contractors to give bond.



No officer to be contractor

tract; and no officer of the penitentiary shall be concerned or interested, directly or indirectly, in any contract, purchase or sale, made on account of the penitentiary.

Warden to take bills of supplies furnished, and enter them in a book.

§ 37. The warden shall take bills of the quantity and price of supplies furnished for the penitentiary, at the time of delivery; and the clerk, as the warden shall direct, shall compare the bills with the articles delivered; if the bills are found correct, he shall enter them with the date upon a book to be kept for that purpose; in like manner bills shall be taken and entered of all services rendered for the penitentiary; if any bill for supplies or services shall be discovered to be incorrect, the clerk shall omit to enter it and immediately give notice to the warden, that the error may be corrected.

All contracts to be in writing—to be binding when approved by inspectors.

§ 38. All contracts, on account of the penitentiary, shall be made by the warden in writing, and when approved in writing by the board of inspectors, shall be binding in law, and the warden or his successor may sue thereon to final judgment and execution; no such suit shall abate by reason of the office of warden becoming vacant, but any successor of the warden, pending such suit, may take upon himself the prosecution thereof, and, upon motion of the adverse party, he shall be required so to do, or submit to a nonsuit.

Warden to purchase raw material to be manufactured by convicts.

§ 39. It shall be the duty of the warden of the penitentiary, under the direction of the inspectors, to purchase and pay for, out of any funds in the treasury, such raw materials as may be deemed necessary to be manufactured and used by the convicts.

To purchase hospital stores.

§ 40. The necessary medicines and other hospital stores, for the use of the penitentiary, shall be purchased, from time to time, as may be requisite, by the warden, with the advice of the physician, and under the direction of the inspectors.

All books of accounts, registers &c., to be considered public documents.

§ 41. All books of accounts, registers, returns, and other documents and papers relating to the affairs of the penitentiary, shall be considered as public documents, and remain therein, and the warden shall cause to be preserved, official copies of his correspondence with the governor, inspectors, or other public officers, and of any official communications he may have received from them.

### 3. Removal of Prisoners to the Penitentiary.

Convicts, how remov'd to penitentiary by sheriff.

§ 42. Every person sentenced in any court of this state, for any offence punishable by imprisonment in the penitentiary, shall, as soon as possible after his sentence, be safely removed, by the sheriff of the county in which the conviction shall have taken place, to the penitentiary, and therein be kept during the term of his or her confinement, in the manner and on the terms prescribed by law; and every sheriff, who shall neglect to remove such convict from the jail, within five days after the adjournment of the court aforesaid, shall forfeit all claims for compensation for such removal, and shall, moreover, be liable to be proceeded against therefor by indictment, and on conviction shall be fined in a sum not less than five hundred dollars, unless the jury trying the cause shall certify that the sheriff had a just excuse for not removing the convict within the time aforesaid; and nothing, herein contained, shall discharge the sheriff from liability to a prosecution for an escape.

Penalty for his neglect of duty.

Guard for safe conveyance of convicts, how impressed.

§ 43. Whenever any person or persons shall be sentenced to undergo imprisonment as aforesaid, it shall be lawful for the judge or clerk of the court, by warrant under his hand and seal, to empower the sheriff, charged with the conveyance of a prisoner, or prisoners,



in all counties and places through which he may pass, to impress as many men, not exceeding two for each convict, (except in cases hereinafter provided for,) as may be necessary for the safe conveyance of such prisoners to the penitentiary; which warrant the sheriff is hereby required to execute, and to his commands, in virtue thereof, all persons are required to pay due obedience, under pain of forfeiting one hundred dollars, to be sued for and recovered by the sheriff for the use of the state: *Provided*, That the sheriff shall, in all cases when it is practicable, detail a sufficient guard, in the county where the prisoner or prisoners are convicted, in order to insure their safe conveyance to the penitentiary; *And provided, also*, That the judge, trying such offender, may, whenever, in his opinion, the safe conveyance of any convict shall require a stronger guard than is above provided for, direct an additional number to be impressed.

Persons summoned, to obey, or forfeit \$100. Guard to be detailed in county of conviction, if practicable.

§ 44. If, by any attempt to rescue a convict on the way to the penitentiary, or by any other unforeseen danger, it may become necessary for the safe conveyance of such convict, to summon a stronger guard, than the sheriff conducting the prisoner may have been authorized to summon, it shall be lawful for such sheriff, to summon such additional guard, as shall be essentially necessary for that purpose; and the additional guards shall be paid as other guards, on the oath of the sheriff that they were in his opinion necessary.

Sheriff may summon additional guard, if found necessary on the way.

§ 45. The sheriff, his officer and guard, attending any prisoner in pursuance of the provisions of this chapter, shall be privileged from arrest in all cases, except treason, felony and breach of the peace, during the time they are engaged in conveying such prisoner or prisoners to the penitentiary, and returning therefrom, allowing one day for every twenty miles from their respective places of abode.

Sheriff and guard privileged from arrest, except, &c.

§ 46. If it shall be made to appear to any judge, sentencing any convict to the penitentiary, that the sheriff is sick, or that the situation of his family is such as to require his attention, or that the public interest would be likely to suffer by his absence, in such case, during the sitting of the court, the said judge shall be authorized, or after the adjournment of the court, any other judge of the circuit court shall be authorized, to release the sheriff from the duty of conveying such convict to the penitentiary, if he can substitute in his stead a trustworthy and responsible deputy; in the event of such substitution, such deputy shall be invested with all the powers, and be subject to all the responsibilities of the sheriff, in the performance of the duties devolved upon him.

If sheriff cannot attend convict, judge may authorize sending a substitute.

§ 47. When any sheriff shall convey any convict to the penitentiary, as aforesaid, he shall be entitled to receive the compensation hereinafter mentioned, for which the comptroller of public accounts shall furnish him with a warrant on the treasurer; on the production of the receipt of the warden of the penitentiary for such convict, and, also, the affidavit of the said sheriff, sworn to before the warden (who is hereby authorized to administer the oath,) or some judicial officer, stating the number of miles on the usual route from the place where the convict was sentenced to the penitentiary, and the number of the guard employed to insure the safe conveyance of the convict, and the distance each of said guards may have traveled, the sheriff shall, for every thirty miles he may necessarily travel, in going to and returning from the penitentiary, be allowed for himself, two and a half dollars, for each of the guards, two dollars, and for each

Compensation of sheriff and guard, and other expenses of transporting convicts, how paid, &c.



convict, one dollar and a quarter, to be paid to the sheriff, from whom each guard shall be entitled to receive the compensation hereby allowed them; and the sheriff shall be entitled to receive, in addition to the amount paid him, for himself, the guards and the convict, the amount expended for ferriages and tolls, in transporting such convict to the penitentiary: should any sheriff convey more than one convict, to the penitentiary at the same time, he shall not be entitled to other or greater compensation for himself and guard, than is above provided; and the deputy of any sheriff, who shall convey any convict to the penitentiary, as required by law, shall, upon producing the receipt, and making the affidavit above specified, be entitled to receive the compensation hereby allowed to sheriffs, and shall pay to the guard their respective portions as the sheriffs are hereby directed to do.

Expenses paid out of compensation.

Jailers to receive and secure convicts on the way.

§ 48. The sheriff and guard shall defray their own expenses out of the compensation hereby allowed them.

§ 49. It shall be the duty of all jailers to receive, and securely keep, (and make therefor the customary and legal charge for victualing prisoners,) all convicts on their way to the penitentiary, whenever the sheriff or other officer, conveying such convict, may think it necessary to have them thus secured for the night, or during any other time they may be necessarily detained on the way.

Escapes, or attempts, &c., how punished.

§ 50. All the provisions, in regard to the escape or attempt of convicts to escape from the penitentiary, shall extend to escapes or attempts to escape, made at any time subsequent to conviction, whether previous to leaving the place of trial, or while on the way to the penitentiary.

Sheriff, &c., suffering convict to escape, how punished.

§ 51. If any sheriff, deputy-sheriff, or guard, having charge of a convict shall, at any time, subsequent to their trial, and previous to their delivery to the warden, voluntarily suffer him or her to escape from custody, such sheriff, deputy, or guard, shall, on conviction, suffer the same imprisonment such convict was sentenced to undergo: *Provided*, That, if such convict, so escaping, be retaken upon fresh pursuit, and delivered to the warden of the penitentiary, in such case, the sheriff, deputy, or guard, shall be punished by imprisonment in the penitentiary, for any term within the discretion of the court, not to exceed, however, the period for which such said convict was himself sentenced.

Proviso.

Warden to receive persons on governor's order, when punishment is commuted.

§ 52. It shall be the duty of the warden, at all times, to receive into the penitentiary, on the order of the governor, any person convicted of any crime punishable with death, or infamous punishment, who shall be pardoned, on condition of being imprisoned, either for life, or a term of years, in the penitentiary, and to confine such person according to the terms of the pardon.

Warden to receive convicts under authority of U. States.

§ 53. The warden shall receive into the penitentiary, all persons convicted before any court of the United States, held within either of the districts of Alabama, and sentenced by such court to the punishment of imprisonment in the penitentiary; and he shall safely keep and employ such convicts, pursuant to their sentence, and the rules and regulations of the penitentiary, until such sentence shall be performed, or the said convicts shall be otherwise discharged, by due course of the law of the United States.



4. *Police of Penitentiary, and Punishment of Escapes.*

§ 54. It shall be the duty of the warden, upon the reception of any convict into the penitentiary, to take his or her height, and cause the same to be entered in a book, in which he shall also note when such convict was received, his or her name, age, complexion, color of his or her hair and eyes, the county in which convicted, the nature of the crime, period of imprisonment, and place of his or her nativity; and the baggage and person of every convict shall be carefully searched, and every instrument therefrom taken, by which he or she may effect his or her escape, before he or she becomes an inmate of the penitentiary.

§ 55. It shall and may be lawful for the warden of the penitentiary, to take in charge any property, money, or other thing of value, in the possession of any convict, at the time of his entering the penitentiary, and to pay the same to such person as the convict shall in writing direct, or to the convict upon his discharge, or to his personal representatives in the event of his death, previous thereto, and should no personal representative be appointed within six months, then the same shall be paid into the treasury of the state.

§ 56. In order to prevent the introduction of contagious disorders, it shall be the duty of the warden to cause every person, who shall be sentenced to the penitentiary, to be washed, cleansed, and kept entirely apart from the other convicts, until it shall be certified by the physician, that he may with safety to their health be permitted to join with them in labor.

§ 57. It shall be the duty of the warden to cause the clothes of the convicts, when received into the penitentiary, to be washed, and carefully put away, placing a ticket with their names on each, to be returned to them on their discharge, or if it should be the wish of any convict, that his or her clothes shall be sold, the warden shall dispose of them to the best advantage, and retain the money arising from the sale, to be paid to such convict on his or her release, or disposed of as provided in the fifty-fifth section.

§ 58. All persons sentenced to punishment in the penitentiary, shall be employed for the benefit of the state; no communication shall be allowed between them and any person without the prison; they shall be confined in separate cells in the night time, and in the day time, all intercourse between them shall, as far as practicable, be prevented.

§ 59. All convicts shall be clothed during the term of their confinement, in a comfortable manner, in coarse and cheap clothing, and made in some peculiar style, so as to distinguish them from the citizens generally; the number of suits of clothing and their style, to be determined by the board of inspectors.

§ 60. That the Sabbath may be suitably distinguished by the convicts, they shall each be furnished by the warden, under the direction of the inspectors, with a neat and cheap suit of clothes to be worn on that day.

§ 61. The warden of the penitentiary shall cause the prisoners to wash themselves every morning, and immediately before meals, to put on clean under garments at least once a week, and all the males shall have their beards shaved as often as may be necessary, and their apartments shall be swept every morning, and fumigated during the summer and fall seasons, once a week or oftener, with some disinfecting substance, and the warden shall cause such other measures

Warden's preliminary duties, on receiving convict.

Property and money of convict, how disposed of.

How to prevent contagious disorders.

Clothes of convict, how disposed of.

Convicts employed for benefit of state.

Not to communicate with others. Confined in separate cells.

How clothed, generally.

How, on the Sabbath.

Cleanliness of their persons and apartments.



Rooms and cells to be numbered and divided into wards. A turnkey to each ward. His duty.

Each convict to have a bible and other suitable books.

Reformations reported to governor.

Diet of convicts, and hours of eating.

Convicts may work for themselves during certain times

Materials, how furnished them.

Proceeds, how disposed of.

Letters, sent to or from convicts, to be opened & read by warden, &c.

Their good conduct,

to be adopted to promote neatness and health, as may be recommended by the physician, or directed by the board of inspectors.

§ 62. The warden shall cause all the rooms and cells to be numbered, and divided into as many wards as there may be turnkeys, allotting to each ward, as near as may be, an equal number of rooms and cells, and assign each ward to a turnkey, whose duty it shall be, under the direction of the warden, to examine, every evening, the doors, beds and rooms of the convicts, to search and lock them before dark, and not to permit the convicts to carry into their cells, any instrument that may assist them in escaping; also, to extinguish carefully all the fire in the work shops, and a bell shall ring every evening, which shall be a signal for the extinguishment of lights in the rooms and cells of the convicts.

§ 63. It shall be the duty of the warden carefully to watch over the conduct of the convicts; each convict shall be provided with a bible, which he shall be permitted to read in his cell at such times as he is not required to perform labor; and the warden shall, from time to time, under the direction of the inspectors, distribute among the convicts such cheap books as are calculated to improve the mind and meliorate the heart, and the inspectors shall report to the governor such of the convicts as may distinguish themselves by their industry and correct deportment, and who, by an exemplary line of conduct may have evinced an entire reformation.

§ 64. The diet of the prisoners shall, in quantity and quality, be such as shall be directed by the board of inspectors, and the provisions shall be sound and wholesome, and the regular hours for eating shall be announced by the ringing of a bell, at the sound of which, all the convicts will assemble at their respective tables, except the sick, who shall be furnished agreeably to the directions of the physician.

§ 65. The convicts shall be permitted to work for themselves, during the time allotted to their meals and rest, and after they shall perform such daily labor as shall be imposed on them, on such articles as the warden may approve; but they shall not be allowed to perform any work in their cells, without the permission of the warden: the warden may furnish them with materials from the stock belonging to the penitentiary, to be paid for out of the wares wrought by them, and the clerk shall take an account of all the articles wrought by them at such times; and they shall be sold by the warden, or under his direction: no convict shall be permitted to receive the money thus earned by him, during the period of his confinement; but the same shall remain in the hands of the warden, to be paid to the convict when released, or expended in the purchase of such articles as he may desire, not inconsistent with the rules of the penitentiary, or to be paid to his family by his direction.

§ 66. All letters, sent to or from any convict, shall be first opened and read by the warden, and in case of vacancy or absence, by the deputy-warden, and if nothing appears therein, improper or unsafe to the institution, then such letters shall be by him delivered or forwarded as desired; and any relation, or friend, shall be allowed, in presence of the warden, or deputy-warden, to speak to any of the convicts, when, in the opinion of the warden, the condition of his family or property may require it; and all information, concerning the convicts, shall be furnished to their friends, on personal application, or by letter, (free of postage,) directed to the warden.

§ 67. For the encouragement of the convicts to conduct themselves with industry and propriety, it shall be the duty of the gov-



error, whenever it appears, from the report of the warden, that the conduct of a convict has been exemplary and unexceptionable, for the entire year, to remit two months of the period for which such convict may have been sentenced to imprisonment. how reward-  
ed.

§ 68. The inspectors and warden shall, if practicable, procure suitable ministers of the gospel, to perform divine service in the chapel of the penitentiary, at least once every Sunday, to instruct the convicts in moral and religious duty, and visit the sick on suitable occasions. Preaching in  
the chapel.

§ 69. No spirituous or intoxicating liquors shall be introduced into the penitentiary, except such as may be used in the families of the officers residing within its precincts, or as may be necessary for the hospital department; and every overseer, turnkey, or watchman, who shall suffer any spirituous or intoxicating liquors to be used by or given to any convict, unless directed so to do by the physician in writing, shall forthwith be dismissed from his office or appointment, and forfeit all wages due to him, and be liable to a penalty of one hundred dollars, to be sued for and recovered in the name of the warden of the penitentiary. No spirituous or intoxicating li-  
quors to be  
allowed con-  
victs.

§ 70. No officer or person holding any appointment, the duties of which are to be discharged within the precincts of the penitentiary, shall say any thing in respect to the police of the prison in the presence of a convict, except it be to direct him or her in his or her duty, or to admonish him or her for delinquency; neither shall he hold conversation with convicts, or allow them to speak to him on any subject, except it relate to necessary duty or business. No officer of  
penitentiary  
to speak of  
its police in  
presence of  
convicts, ex-  
cept, &c.

§ 71. The male and female convicts shall, at all times and on all occasions, be kept separate and apart; and the females, as well as the males, shall be kept separate and apart at night. Male and fe-  
male con-  
victs to be  
kept separate

§ 72. If any convict shall neglect or refuse to perform the labor assigned to him or her, or shall willfully injure any of the materials, implements or tools, or shall engage in conversation with any other convict, or shall, in any other manner, violate or infringe any of the regulations of the penitentiary, he shall be punished by solitary confinement, for a period not exceeding thirty days for each offence, at the discretion of the warden, or, in case of vacancy or absence, then at the discretion of the deputy-warden: *Provided*, That, if the board of inspectors should believe the punishment inflicted to be too severe, they shall have power to remit a portion thereof. Neglect of  
duty, and  
other offen-  
ces of con-  
victs, how  
punished.

§ 73. It shall be the duty of the warden or deputy-warden, to make a written report forthwith to the president of the board of inspectors, of the name of each person committed to solitary confinement, as aforesaid, with a statement of the nature of his offence, and the period for which committed; which report shall be recorded by the clerk of the penitentiary, and the president of the board of inspectors, shall, if he deem it expedient, convene the board for the purpose of considering the case reported; and if it shall appear to the inspectors, or a majority of them, either at a called or stated meeting, that the punishment of solitary confinement was improperly inflicted, they are hereby required to certify the same on the minutes of their proceedings. Warden or  
deputy to  
report forth-  
with to in-  
spectors,  
persons plac-  
ed in soli-  
tary confine-  
ment, &c.

§ 74. Every convict, against whom the punishment of solitary confinement shall be awarded, by the sentence of a court, or for a violation of any of the rules and regulations of the penitentiary, shall be confined in a solitary cell, and during such confinement shall be fed with bread and water only, unless the physician of the peniten- Convicts  
sentenced by  
a court to soli-  
tary confine-  
ment, how  
treated.



tiary shall certify to the warden that the health of such convict requires other diet.

Mode of proceeding on death of convict.

§ 75. Whenever any convict shall die in the penitentiary, it shall be the duty of the warden forthwith to notify some one of the inspectors, if within a convenient distance, and two or more justices of the peace of Coosa county, to examine the body of the deceased; and it shall be the duty of such of them as shall attend, to ascertain, as nearly as may be, the cause of his death, and report the same to the board of inspectors; and the warden shall not permit the body of any deceased convict to be removed to the burial place, until such examination shall be had; if the body of any deceased convict is not applied for by his friends, within a convenient time after such examination, the warden shall cause it to be decently interred in the burying-place, to be provided in the vicinity of the penitentiary.

Not to be discharged while sick, unless he requests it. Money and clothing to be furnished on discharge.

§ 76. If any convict, at the expiration of his term of imprisonment, shall labor under an acute or dangerous disease, such convict shall not be discharged while sick, unless at his request.

§ 77. Each convict shall receive, at his or her discharge, a sum of money not exceeding ten dollars, at the discretion of the inspectors, to enable him or her to reach his or her place of residence, and no convict shall leave the prison without being furnished with decent clothing.

Regulations to be printed, and placed on walls of workshops and cells.

§ 78. Such of the foregoing regulations, with all others that may hereafter be adopted by the legislature, or inspectors, with the approbation of the governor, with which it may be necessary that the convicts shall be acquainted, together with all the sections of this act, relating to escapes by convicts, shall be printed with type sufficiently large to be conveniently read, and placed against the wall in the workshops and in each cell; and the same shall be read and explained by the warden, to each convict, on his admission to the penitentiary.

Escape, or attempt to escape by convict for term less than life, how punished.

§ 79. If any convict, imprisoned in the penitentiary for a term less than life, shall escape, or shall attempt, by violence, to escape, on conviction thereof, he shall suffer such additional imprisonment, as the court, in which such offender shall be convicted, shall direct, not less than two nor more than five years; and convicts, so escaping, shall remain in the penitentiary, as other inmates, after their apprehension, until their trial takes place, unless their term of imprisonment has expired; in which event they may be discharged on giving sufficient bail; upon which trial the fact of imprisonment in the penitentiary shall be *prima facie* evidence of a conviction and sentence to imprisonment therein.

Assault by such convict, with intent to kill or maim an officer, how punished. Conspiracy, how punished.

§ 80. If any convict, confined in the penitentiary for a term less than life, shall assault the warden, or any other officer of the same, with intent to kill or maim, he, she or they, so offending, shall, on conviction thereof, be sentenced to confinement in the penitentiary for a period not less than ten, nor exceeding twenty years; and if any two or more convicts, thus confined, shall conspire for the purpose of killing or maiming any officer of the penitentiary, on conviction thereof, he, she, or they, shall be sentenced to undergo a further confinement in the penitentiary, for a term not less than five, nor more than ten years, to commence at the expiration of the term for which such convict was under sentence, unless such term shall have expired previous to the trial, in which event the term of imprisonment shall commence from the time when he or she may be delivered to the warden of the penitentiary.



§ 81. If any convict in the penitentiary, under sentence of imprisonment for life, shall escape therefrom, or shall attempt by violence to escape, or shall assault with intent to kill or maim the warden or any inspector, or other officer, or person employed in the government of or custody of the penitentiary, he shall be punished by solitary confinement in the penitentiary not exceeding six months, to be executed at such time or times as the court shall direct.

Convict sentenced for life, how punished for such offences

§ 82. Every person, who shall convey into the penitentiary any disguise, instrument, tool, weapon, or other thing, useful to aid any convict in making his escape therefrom, with intent to facilitate the escape of any convict there lawfully detained, or who shall, by any act done, aid any convict in an endeavor to escape, whether such escape be attempted or effected, or not, such person shall be imprisoned in the penitentiary, not less than two nor more than four years; and every person, who shall forcibly or fraudulently attempt to rescue a convict, held in custody by any officer or other person, under sentence of imprisonment in the penitentiary, shall be punished by imprisonment in the penitentiary, for a period not less than two nor exceeding five years; and any person, who shall forcibly or fraudulently rescue any convict, held in custody by any officer or other person, under sentence of imprisonment in the penitentiary, shall be punished by imprisonment in the same for a period equal to the unexpired term for which the convict, thus rescued, was imprisoned: *Provided, however,* That, if such term shall be less than two years, the offender shall be confined in the penitentiary for that length of time.

Aiding convict to escape, how punished.

Rescue of convict, by fraud or force, how punished.

Proviso.

§ 83. In case any convict, committed by the courts of the United States, shall escape, or attempt to escape out of the penitentiary, he shall be liable to the like punishment, as if he had been committed by virtue of a conviction and sentence under the authority of this state; and the warden, or other officer, having charge of such convict, shall be liable to the like penalties and punishment, for any neglect or violation of duty in respect to the custody of such prisoner, as if he had been committed by virtue of a conviction and sentence under the authority of this state.

Escape, &c. of convict under judgment of court of U.S. how punished.

§ 84. Whenever any convict, imprisoned in the penitentiary shall escape therefrom, it shall be the duty of the warden to take all proper measures for his apprehension, and for that purpose he shall forthwith communicate to the governor the fact of such escape, the time when, and the circumstances under which, it was committed, together with a particular description of the convict, his age, size, complexion, color of hair and eyes, from what county committed, for what offence, and when.

Duty of warden, when convict escapes.

§ 85. If any officer, or other person employed in the penitentiary, shall voluntarily suffer any convict imprisoned therein to escape, or shall in any way consent to such escape, he shall be punished by imprisonment in the penitentiary, for a period equal to the unexpired term of the convict or convicts escaping, if such unexpired term shall exceed two years; and in no case less than two years.

Any officer voluntarily suffering an escape, how punished.

§ 86. If any officer or person employed in the penitentiary shall suffer any convict, under sentence of solitary imprisonment, to be at large, or out of the cell assigned to him or her, unless directed by the physician to remove him or her to the hospital, on account of sickness, or shall suffer any convict imprisoned in the penitentiary to be at large, out of the precincts of the same, or to be visited, conversed with, or in any way relieved or comforted, con-

Suffering convict to go at large, or out of the cell assigned him, or out of precincts, &c., how punished.



trary to the regulations of the penitentiary, he shall, on conviction, be punished by fine, not less than one hundred and not exceeding five hundred dollars.

### 5. Mode of serving Process and taking Testimony of Convicts.

Writ, summons, or subpoena, against convict, to be directed to warden, who shall serve it &c.

Proceedings in court, judgment &c.

Convict's answer in chancery, how taken.

If he refuse or neglect to answer, bill to be taken *pro confesso*.

Convict's testimony in criminal prosecution, how obtained.

§ 87. Whenever any suit shall be instituted against any convict imprisoned in the penitentiary, the writ, summons or subpoena, shall be directed to the warden, who shall make it known to the convict, by leaving a copy with him, and shall return the original to the proper court; in all suits pending against any one who shall hereafter be convicted and imprisoned in the penitentiary, in which it may be necessary to issue any *mesne* process against him, after such imprisonment, the like proceedings shall be had; if no appearance is entered for the convict, after the return of process, the court, before which the suit is pending, shall require the plaintiff to prove the claim, or cause of action, in the same manner, as if the general issue was pleaded by the convict; no judgment shall be rendered, in any suit commenced by attachment against a convict so imprisoned, until a notice shall have been issued to inform the convict of the proceedings against his property; which notice shall be served and returned by the warden, as other process against convicts.

§ 88. Whenever the complainant, in any suit in equity against an imprisoned convict defendant, shall require his answer to the bill of complaint, the master in chancery, of the court in which the bill is pending, shall issue a commission, to be directed to the inspectors of the penitentiary, requiring some one of them to take the answer of such convict; if such convict will voluntarily answer the bill of complainant, he shall be allowed the aid of counsel to prepare his answer, at such convenient time or times as the inspector executing the commission may direct; the answer shall be sworn to before the inspector taking the same, and be returned with the commission to the proper court; if the convict shall refuse or neglect for the space of thirty days, after he shall be required by the inspector to make the answer, the inspector shall return the commission, and thereon certify the refusal or neglect to answer, after which the allegations of the bill may be taken as confessed, and a decree made against such defendant, as if they had been established by proof; but nothing, herein contained, shall prevent the chancellor, from giving to the convict further time to answer the bill; if, in his opinion, the justice of the case shall require it.

§ 89. Whenever the presiding judge of any circuit court shall have reason to believe, that the testimony of an imprisoned convict is necessary, in any prosecution by the state, and that other evidence cannot be obtained on behalf of the state, he may direct a writ of *habeas corpus ad testificandum* to be issued, requiring the warden, on a certain day to be named in the writ, to have the body of the convict before the circuit court in which his testimony shall be required; it shall be the duty of the warden so to provide, that the convict shall appear before the circuit court, at the time and place designated in the writ; and for this purpose he shall be authorized to employ a trust worth deputy, and a sufficient guard to prevent escapes; the deputy and guard shall be allowed the same compensation as is allowed to the sheriff and guard summoned by him, for removing a convict to the penitentiary, and the further sum of two dollars for each day they shall remain in attendance on the circuit



court, charged with the custody of the convict; when the convict shall have given his testimony, or the prosecution shall have been continued, he shall be remanded to the penitentiary, and the deputy and guard shall conduct him thither with all convenient speed; the convict, the deputy and guard, in going to and from, and while remaining at the circuit court, shall be respectively liable for an escape or attempt to escape, in the same manner as they would have been, if the convict was within the penitentiary under their custody; and it shall be the duty of the sheriff or jailer of the county, to receive and safely keep the convict in the county jail, during his attendance upon the court, if required so to do by the persons having such convict, for which the legal charge of victualing prisoners shall be allowed.

§ 90. When any party to a civil suit shall wish to take the testimony of an imprisoned convict, he shall make affidavit of the materiality of his testimony, and file interrogatories, in the office of the clerk of the court where such suit is pending, and serve a copy of the same on the adverse party, giving to him such notice as the clerk may deem reasonable, when a commission shall issue; at any time before the commission is issued, the adverse party may file cross interrogatories; after the expiration of the time prescribed by the clerk for notice, he shall issue a commission, with the interrogatories, and cross interrogatories, if any annexed, directed to the inspectors of the penitentiary, any one of whom is hereby authorized and required, to take the answers of the convicts on oath to the same, and make return thereof, together with the commission to the proper court.

Testimony in a civil suit taken by commission, upon interrogatories & cross interrogatories.

§ 91. The defendant, in a prosecution by the state, may, in like manner, take the testimony of an imprisoned convict in his behalf, but the notice and copy of interrogatories in such case, shall be served on the solicitor of the circuit in which such prosecution is pending; and nothing, contained in this, or preceding sections, shall authorize the admission of the testimony of a convict who is by law an incompetent witness.

Defendant in a state prosecution may, in like manner, take convict's testimony.

## CHAPTER II.

### *Of Offences against the Public Peace.*

§ 1. Every person, who shall commit the crime of treason against this state, and be thereof convicted, shall suffer death; or confinement in the penitentiary for life at the discretion of the jury trying the same.<sup>1</sup>

Treason against the state.

§ 2. If any free person shall aid and assist, or be in anywise concerned with, any slave or slaves, in any actual or meditated rebellion or insurrection against the white inhabitants of this state; or against the laws and government thereof; or shall in any manner advise, consult or plot with any slave or slaves, for the purpose of encouraging, exciting, aiding or assisting in any such rebellion or insurrection, either actual or meditated; such free person shall, on conviction of any one of the offences declared by this section, suffer death; or confinement in the penitentiary for life, at the discretion of the jury trying the same.

Free person aiding in rebellion or insurrection of slaves.

<sup>1</sup> Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort.—Con. Ala. Art. 6, § 2.



Writing, printing, drawing, painting, or engraving any thing to excite discontent or rebellion of slaves or free persons of color.

§ 3. If any person shall, in this state, write, print, draw, paint, or engrave, or shall aid or abet, in writing, printing, drawing, painting or engraving, on paper, parchment, cloth, metal, wood, stone, or any other substance, with intent to circulate the same, any paper, essay, verses, pamphlet, books, painting, drawing, or engraving, calculated to excite discontent, insurrection or rebellion amongst the slaves, or free persons of color, or if any person shall have in his possession, with intent to circulate the same, any paper, essay, verses, pamphlet, book, painting, drawing or engraving, as aforesaid, such person shall, on conviction thereof, be punished by imprisonment in the penitentiary for a term not less than ten years.

Knowingly circulating such writing, &c.

§ 4. If any person shall knowingly circulate, or shall aid or abet in circulating in this state, any paper, essay, verses, pamphlet, book, painting, drawing or engraving, whether written, printed, drawn or engraved, on paper, parchment, cloth, metal, wood, stone, or any other substance, and whether the same be written, printed, painted, drawn or engraved, within or out of this state, with the intent and calculated to excite discontent, insurrection or rebellion amongst the slaves or free persons of color, such person shall, on conviction, suffer death, or be imprisoned in the penitentiary not less than ten years, at the discretion of the jury trying the same.

Unlawful assembly pulling down, or destroying dwelling-house, &c.

§ 5. If any persons, unlawfully assembled, shall demolish, pull down and destroy, or shall begin to demolish, pull down and destroy any dwelling-house, or any other building, or any ship or vessel, he shall be punished by imprisonment in the penitentiary not less than two and not exceeding five years, or fined and imprisoned in the common jail, at the discretion of the jury trying the same.

### CHAPTER III.

#### *Of Offences against the Persons of Individuals.*

Murder in the first degree.

§ 1. Every homicide, which shall be perpetrated by means of poison, lying in wait or by any other kind of willful, deliberate, malicious and premeditated killing, or which shall be committed in the perpetration of, or in the attempt to perpetrate, any arson, rape, robbery or burglary, shall be deemed murder in the first degree; so also, every homicide, perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is slain, or perpetrated by any act eminently dangerous to the lives of others, and evincing a depraved mind, regardless of human life, although without any preconceived purpose to deprive of life any particular individual; and every person, guilty of murder in the first degree, shall, on conviction, suffer death, or confinement in the penitentiary for life, at the discretion of the jury trying the same.<sup>1</sup>

How punished.

Murder in the second degree.

§ 2. Every homicide, committed under such circumstances as constitute the crime of murder at the common law, and is not embraced

<sup>1</sup>The 2d section of the act of 1807—(6) “for the punishment of crimes and misdemeanors,” (Aik. Dig. 102,) is not expressly repealed, and may be considered still in force. It is in these words:

“Every person, liable to be prosecuted for petit treason, or as accessory thereto, shall be indicted, proceeded against, and punished, as is directed in other kinds of willful murder.”



by murder in the first degree, as defined in the preceding section, shall be deemed murder in the second degree; and it shall be the duty of the jury, before whom any person indicted for murder shall be tried, if they find the offender guilty, to ascertain by their verdict whether he be guilty of murder in the first or second degree; but if the accused, upon arraignment, shall confess his guilt, the court shall proceed by impanneling a jury, and the examination of testimony, to determine the degree of the crime, and to give sentence accordingly; and every person, guilty of murder in the second degree, shall, on conviction thereof, be punished by imprisonment in the penitentiary for a period not less than ten years.

Duty of jury on indictments for murder.

How punished.

§ 3. Every person, convicted of the crime of manslaughter, by voluntarily depriving a human being of life, shall be deemed guilty of manslaughter in the first degree, and shall, on conviction, be punished by imprisonment in the penitentiary for a period not less than two and not exceeding ten years.

Manslaughter in the 1st degree.

How punished.

§ 4. Every person, convicted of manslaughter under any other circumstances than those expressed in the last section, shall be deemed guilty of manslaughter in the second degree, and shall be fined in a sum not exceeding one thousand dollars, or imprisoned not exceeding six months, or both fined and imprisoned.

Manslaughter in the 2d degree.

How punished.

§ 5. If any person shall, with malice aforethought, cause the death of a slave, by cruel, barbarous or inhuman whipping or beating, or by any cruel or inhuman treatment, or by the use of any instrument in its nature calculated to produce death, such killing shall be deemed murder in the first degree.

Killing slave by certain treatment, murder in first degree.

§ 6. If any person, being the overseer or manager of any slave or slaves, or having the right to correct such slave or slaves, shall cause the death of the slave by such barbarous, or inhuman whipping or beating, or by any other cruel or inhuman treatment, although without intention to kill, or shall cause the death of any such slave or slaves, by the use of any instrument in its nature calculated to produce death, though without intention to kill, unless in self defence, such killing shall be deemed murder in the second degree.

Overseer or manager causing death by barbarous, or inhuman whipping, &c. murder in second degree.

§ 7. If any person, being the owner of any slave or slaves, shall cause the death of the slave, by cruel, barbarous, or inhuman whipping, or beating, or by any other cruel, or inhuman treatment, although without intention to kill, or shall cause the death of any such slave by the use of any instrument in its nature calculated to produce death, though without intention to kill, unless in self defence, or in the use of so much force as is necessary to procure obedience on the part of the slave, such killing shall be deemed murder in the second degree.

Owner of slave causing death by such means, murder in 2d degree.

§ 8. If any person shall be guilty of fighting in the streets of any city or town, or at a militia muster, or other place public in itself, or made public by any assemblage of people, for any purpose whatever, and shall employ or use during such fight any fire arms, or air gun, by discharging (or attempting to discharge) the same, unless in self defence, such person shall, on conviction thereof, be fined in a sum not less than one hundred nor more than five hundred dollars, or be imprisoned in the county jail for a term not exceeding six months, or both, at the discretion of the jury trying the offence.

Fighting in streets of city, &c. and using fire arms or air gun, except, &c.

How punished.

§ 9. When the killing in any sudden rencounter or affray shall be caused by the assailant, by the use of a deadly weapon, concealed before the commencement of the fight, his adversary having no deadly

Killing with deadly weapon, when mur-



der in 2d degree.

weapon drawn, such killing shall be deemed murder in the second degree, but the jury shall not be precluded from finding such person guilty of murder in the first degree.

Killing in a duel, murder in 2d degree.

§ 10. If any person shall, within this state, kill another in fight, by single combat, commonly called a duel, with deadly weapons, such killing shall be deemed murder in the second degree.

Giving, &c. challenge to fight, how punished.

§ 11. Every person, who shall give, accept, or knowingly carry a challenge in writing or otherwise, to fight in single combat, with any deadly weapon, either in or out of this state, and be thereof convicted, shall be punishable by imprisonment in the penitentiary for two years.

Person, giving or accepting a challenge, ineligible to office.

§ 12. Every person, who shall hereafter, in this state, or in any other state of the United States, or in any territory or district thereof, give or accept a challenge to fight with any deadly weapon in single combat, shall be disqualified from holding or being eligible to be elected or appointed to any office whatever, under the constitution and laws of this state, and it shall not be necessary, in any indictment under this section, that a previous conviction for giving or accepting the challenge aforesaid shall have been had.

Mortal wound given in one county and death in another, offender prosecuted in either. So, if wound be given at sea, or out of state, and death in state.

§ 13. If any mortal wound shall have been given, or other violence or injury shall be inflicted, or any poison shall be administered in one county, by means whereof death shall ensue in another county, the offence may be prosecuted and punished in either county; and if any such mortal wound shall be given, or other violence or injury shall be inflicted, or poison administered on the high seas or on land, either within or without the limits of this state; by means whereof death shall ensue in any county thereof, such offence may be prosecuted and punished in the county where such death may happen.<sup>1</sup>

Rape.

How punished.

§ 14. Any person, who shall commit the crime of rape and be convicted thereof, shall be punished by imprisonment in the penitentiary for life.

Carnal knowledge of woman above 10 years, by administering substance to produce stupor, &c.

§ 15. Every person, who shall have carnal knowledge of any woman above the age of ten years without her consent, by administering to her any substance, either solid or liquid, which shall produce such stupor, or such imbecility of mind, or weakness of body, as to prevent effectual resistance, shall, upon conviction, be punished by imprisonment in the penitentiary for life.

<sup>1</sup> Sec. 9, of the act of Feb. 7th, 1807,—(18) entitled "An Act to provide for the more effectual administration of justice," (Aik. Dig. 119.) so far as regards the punishment of offenders, when death happens out of the state, in consequence of any injury inflicted within it, does not seem to be repealed. It is in the following words:

"When any person shall be feloniously stricken, or poisoned, at any place out of this territory, and shall die of the same stroke, or poisoning within this territory; or when any person shall be feloniously stricken, or poisoned, at any place within this territory, and shall die of the same stroke, or poisoning, at any place out of this territory, an indictment thereof found by the jurors of the county, or district, in which such death, stroke or poisoning, shall happen, respectively, as aforesaid, whether before the coroner, or justice, upon a view of the dead body, or before any court having authority to enquire of murders, shall be as good and effectual in law, against the principals and accessories, as if such felonious stroke and death, or poisoning and death, and the offence of such accessories, had happened in the same county where such indictment shall be found: and the circuit or superior court holden in such county, shall and may proceed upon the same in all points, as they might or ought to do, in case such stroke, poisoning or death, had happened in the same county where such indictment shall be found."



§ 16. In prosecutions for rape, the act being shown to have been committed forcibly and against the consent of the woman, the proof of penetration shall be deemed sufficient evidence of the commission of the crime. In prosecutions for rape, what sufficient.

§ 17. Every person, who shall carnally know, or abuse in the attempt to carnally know, any female child under the age of ten years, shall, on conviction, be punished by imprisonment in the penitentiary for life. Carnal knowledge of female under 10 years.

§ 18. Every person, who shall take any woman unlawfully against her will, and by menace, duress or force, compel her to marry him, or to marry any other person, or to be defiled, and be thereof duly convicted, shall be punished by imprisonment in the penitentiary not less than seven years. Abduction of female, and compelling her to marry or be defiled.

§ 19. Every person, who shall take any female under the age of twelve years, from her father, mother, guardian or other person, having the legal charge of her person, without their consent, either for the purpose of prostitution, concubinage or marriage, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for a term not less than two years. Abduction of female under 12 years, &c.

§ 20. Every person, who shall maliciously, forcibly, or fraudulently lead, take, or carry away, or decoy, or entice away, any child under the age of twelve years, with the intent to detain or conceal such child from its parent, guardian, or any other person having the lawful charge of such child, shall, upon conviction, be punished by imprisonment in the penitentiary for a period not less than five years. Malicious, forcible, or fraudulent abduction of child under 12 years.

§ 21. Every person, navigating any boat or vessel for gain, who shall willfully receive so many passengers or such a quantity of other lading on board of such boat or vessel, that, by means thereof, such boat or vessel shall sink or overset, and the life of any human being shall be endangered, shall, upon conviction, be adjudged guilty of a misdemeanor, and be fined in a sum not exceeding one thousand dollars, and may be imprisoned, at the discretion of the jury, in the county jail, not exceeding six months. Endangering human life by overloading &c. boat.

§ 22. Whenever, hereafter, loss of human life, or injury to any human being, shall occur on board of any steam-boat navigating the waters of this state, from the negligence or want of skill of the captain, engineer, or other officer or person engaged in the management of such steam-boat, the officer or other person, so causing such loss of life or injury, shall, on conviction, be punished by imprisonment in the penitentiary, not less than two nor more than ten years. Death on steam-boat by negligence or want of skill in captain, &c.

§ 23. If any captain, or any other person, having charge of a steam boat, used for the conveyance of passengers, produce or merchandise, or if the engineer, having charge of the boiler of such boat, or of any apparatus therein for the generation of steam, shall, from ignorance or gross neglect, or for the purpose of excelling some other boat in speed, create, or allow to be created, such an undue quantity of steam, as to burst or break the boiler, or other apparatus, in which such steam shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking, human life shall be endangered, every such captain, engineer or other person shall be adjudged guilty of a misdemeanor, and shall be confined in the penitentiary not less than two years. Endangering human life on steam-boat by bursting boiler through ignorance or neglect, &c.

§ 24. Every person, who shall forcibly confine or imprison, or shall inveigle or kidnap any free person within this state, against his or her will, or shall forcibly cause any free person to be confined, or imprisoned in this state, against his or her will, with intent to Forcibly confining or kidnapping free person.



remove such person without the limits of this state, without lawful authority for such removal, upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term not less than three, nor more than ten years.

Offences in  
last section,  
where tried.

§ 25. Every offence, prohibited in the last section, may be tried, either in the county in which the same may have been committed or any county through which such person, so kidnapped or confined, shall have been taken, while under such confinement.

Selling or  
buying free  
person for  
slave.

§ 26. Every person, who shall be guilty of selling or buying any free person for a slave, knowing the said person so bought or sold to be free, and shall be thereof convicted, shall be punished by imprisonment in the penitentiary, for a term not less than ten years.

Bringing free  
person into  
this state to  
hold as a  
slave.

§ 27. Every person, who shall bring within this state, any free person, with intent to hold or dispose of such free person as a slave, knowing such person to be free, and shall be thereof convicted, shall be punished by imprisonment in the penitentiary for a term not less than two, nor more than ten years.

Robbery,  
how punish-  
ed.

§ 28. Any person, who shall commit the crime of robbery, and be thereof convicted, shall be imprisoned in the penitentiary for a term not less than ten years.

Mayhem.

§ 29. Every person, who, from malice aforethought, shall cut out or disable the tongue, or put out or destroy an eye, cut or strike off an ear, cut or slit, mutilate or destroy, the nose or lip, or cut, tear, or strike off or disable, a limb, or member of any other person, every such offender, and every person privy to such attempt, who shall be present, aiding in the commission of such an offence, shall be punished by imprisonment in the penitentiary, for a term not less than two, and not exceeding twenty years.

How pun-  
ished.

Assault with  
intent to  
murder,  
maim, rob, or  
ravish, &c.

§ 30. Every person, who shall be guilty, and be thereof convicted, of an assault with an attempt to murder, maim, rob, or ravish, or shall attempt to poison any human being, or shall attempt to commit murder by any means which do not amount to an assault, shall be punished by imprisonment in the penitentiary for a term not less than two nor exceeding twenty years.

Assault and  
battery with  
cow-hide,  
stick or  
whip, having  
a pistol, &c.

§ 31. If any person shall assault and beat another with a cow-hide, stick or whip, and shall, at the same time, have in his possession a pistol or other deadly weapon, with the intent to intimidate and prevent the person so beaten from defending himself, such person shall, on conviction, be sentenced to imprisonment in the penitentiary, for a term not less than two nor more than twenty years.

Lynching.

§ 32. All persons, to the number of two or more, who shall abuse, whip, or beat, in the manner commonly called lynching, any person, upon any accusation, real or pretended, or to force such person to confess himself guilty of any crime or offence, or to give evidence, or to compel such person to consent to leave the neighborhood or state, shall, on conviction, be fined and imprisoned, one or both, at the discretion of the jury.

How pun-  
ished.

Injuring or  
obstructing  
rail road, &c.

§ 33. Every person, who shall wantonly and maliciously injure any rail road in this state, in use for the transportation of passengers, or shall wantonly and maliciously place thereon any impediment or obstruction, by means whereof the car or vehicle employed in such transportation, shall diverge or be thrown from the track of the road, shall, on conviction, be imprisoned in the penitentiary, not less than two, nor more than five years.

How pun-  
ished.



## CHAPTER IV.

*Of Offences against public or private Property.*

§ 1. If any person shall, without lawful authority, willfully injure or deface the penitentiary, or any one of the buildings appurtenant thereto, used as a residence or lodging room, or room for consultation or deliberation, by the inspectors, warden or any other officer of the penitentiary, or any wall or railing inclosing the same, the person, so offending, shall, on conviction thereof, be fined in a sum not exceeding ten times the injury done: *Provided*, That the fine shall, in no case, be less than ten dollars.

Injuring or defacing penitentiary or appurtenances.

How punished.

§ 2. If any person shall willfully write or draw figures or characters on the walls of the state-house of this state, such person, so offending, shall be adjudged guilty of a misdemeanor, and, on conviction, shall be fined in a sum not less than ten dollars, nor more than one hundred dollars; and it shall be the duty of the person, to whom the charge of the state-house shall be committed by the legislature, or if there be no such person appointed, it shall be the duty of the private secretary of the governor, to cause this section to be printed and placed, and at all times kept upon the wall, in at least six public places, in the state-house.

Writing or drawing figures or characters on walls of state-house.

§ 3. Every person, who shall willfully injure or deface any court-house, market-house, jail, church, or other public buildings, without lawful authority, or any wall or fence inclosing the same, and be thereof convicted, shall be fined in a sum not exceeding ten times the injury done, but in no case shall the fine be less than ten dollars.

Injuring &c. court-house, jail, market-house, church &c.

§ 4. If any person shall unlawfully, willfully and maliciously break, throw down, or destroy any fence or inclosure, or break, cut off, or carry away from its mooring or landing, or destroy any ferry-boat, flat or canoe, belonging to any other person, every person, so offending, shall, on conviction of either of the aforesaid offences, be fined in a sum not less than five times the value of the property injured or destroyed; and, on failing to pay the damages and costs, shall be imprisoned in the county jail, for a period not exceeding three months.

Injury or destruction of fence &c., or breaking &c. ferry-boat, flat or canoe, belonging to another.

§ 5. If any person shall unlawfully, willfully, and maliciously kill or disable any horse, mare or gelding, colt or filly, ass or mule, or any goat, sheep or cattle, or any hog, or live stock, of any kind or description whatever, belonging to any other person; or shall unlawfully, willfully or maliciously burn or otherwise destroy or injure any ricks or stacks of hay, fodder, pease or grain in the sheaf; or shall unlawfully, willfully or maliciously destroy or injure any cotton, corn or other article, or commodity of value; or any goods, wares or merchandise; or any timber or frame prepared for building; or any pile of wood, boards or lumber belonging to any other person; every person, so offending, shall, on conviction of any of the aforesaid offences, be fined in a sum equal to five fold the value of the property injured or destroyed, and shall be imprisoned in the county jail for a term not exceeding six months.

Malicious mischief.

How punished.

§ 6. If any person shall cut, or burn off, or pull out the hair from the main or tail of any horse, mare or gelding, colt, filly, ass, or mule, belonging to any other person, with intent to disfigure such animal; or shall cut off the ear or tail of either of said animals; or shall, willfully and mischievously, in any other way injure or disfigure the

Willful and mischievous disfiguring of domestic animals.



same, with the intent aforesaid ; every such offender shall, on conviction, be fined in a sum not less than five times the injury supposed to be inflicted by such disfiguring, and imprisoned in the county jail not exceeding six months ; one or both, at the discretion of the jury trying the offence.

Fines under § 4, 5, 6, to go to party injured. Willful and malicious trespass on freehold, or severing, or carrying away any thing growing or attached there-  
to.

§ 7. The fines, imposed in the three last preceding sections for the offences therein mentioned, shall be paid to the party injured.

§ 8. Every person, who shall willfully and maliciously commit any trespass, by cutting down or destroying any wood, or timber growing or standing upon the lands of any other person ; or shall maliciously sever from the freehold any produce thereof, or any thing attached thereto ; or shall sever and carry away from any freehold, any property or thing attached thereto, under such circumstances as would render the trespass a larceny, if the thing so severed or carried away were personal property ; he shall, upon conviction, be deemed guilty of a misdemeanor, and be punished by fine, and may be imprisoned in the county jail, in the discretion of the jury trying the same, according to the circumstances of the case ; the fine not to exceed two hundred dollars, and the imprisonment not to exceed six months.

Removing corner stone, &c. for designating boundary of land.

§ 9. Every person, who shall willfully and maliciously remove any monuments of stone, wood or other durable material, erected for the purpose of designating the corner, or any other point in the boundary of any lot or tract of land ; or shall willfully and maliciously deface or alter the marks upon any tree, post, or other monument, made for the purpose of designating any corner or other point in the boundary of any lot or tract of land ; or shall willfully and maliciously cut down or remove any tree upon which any such mark shall be made, for the purpose aforesaid ; shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by a fine not less than fifty and not exceeding five hundred dollars, and may be imprisoned at the discretion of the jury in the county jail, not less than thirty days.

Breaking, destroying, or defacing mile stone, &c. on public road.

§ 10. Every person, who shall willfully and maliciously break, destroy, or remove, any mile stone, mile post or board, guide or finger board, erected upon any public highway or turnpike, or shall willfully and maliciously deface or alter any inscription, upon such stone, post or board, shall, upon conviction, be adjudged guilty of a misdemeanor, and fined in a sum not less than ten and not exceeding fifty dollars.

Destroying or injuring toll bridge, or turnpike gate.

§ 11. Every person, who shall willfully or maliciously destroy or materially injure, otherwise than by burning, any public or toll bridge, or any turnpike gate, shall, upon conviction, be adjudged guilty of a misdemeanor, and fined in a sum not less than fifty and not exceeding one thousand dollars, and be imprisoned in the county jail, at the discretion of the jury, for a term not exceeding six months.

Destroying or injuring mill dam &c.

§ 12. Every person, who shall unlawfully, willfully and maliciously destroy, or materially injure any mill dam, or other dam erected to create hydraulic power, or any embankment necessary to support such dam, shall, upon conviction, be adjudged guilty of a misdemeanor, and fined in a sum not less than fifty and not exceeding one thousand dollars, and may be imprisoned at the discretion of the jury, in the county jail, for a term not exceeding six months.



§ 13. Every person, who shall willfully and wantonly poison any spring, fountain, well, or reservoir of water, shall, upon conviction, be punished by imprisonment in the penitentiary not less than three, and not exceeding ten years. Poisoning spring, well, &c.

§ 14. Every person, who shall harbor or conceal any runaway slave or slaves, or fugitives from their masters, or other person having charge of them, knowing that they are such, such person, so offending, shall, on conviction, be fined not less than one hundred, and not more than one thousand dollars; or be imprisoned in the penitentiary not more than two years, at the discretion of the jury trying the same. Harboring slaves, &c. How punished.

§ 15. Every person, who shall knowingly aid any negro or other slave to run away, or depart from his master's service, such person, so offending, on conviction, shall suffer imprisonment in the penitentiary not less than two, and not exceeding five years. Aiding slave to run away.

§ 16. If any person shall, directly or indirectly, persuade or induce any slave to leave his, her or their master's or mistress' service, with the intent and design to depart or escape to some other country, where such slave may enjoy his or her freedom, or shall harbor or conceal such slave, with a knowledge of the intent of such slave to depart to such state or country, such person shall, on conviction, be punished by imprisonment in the penitentiary for a period not less than five, and not exceeding fifty years. Seducing slave from master, with intent to leave the state, &c.

§ 17. If any person shall forge the name of the owner or manager of any slave, or shall sign the name of any such owner or manager, to any pass or permit, with the intention to enable such slave to escape, or run away from his owner or manager; or shall forge or fabricate any paper or document, to enable such slave to pass as a free person, or with intent to enable such slave to escape from the state, such offenders shall, on conviction, be punished by imprisonment in the penitentiary for a term not less than five, nor more than twenty years. Forging pass for slave with intent, &c. Forging free papers. How punished.

§ 18. Every person, who shall inveigle, steal, carry, or entice away, any such slave, with a view to convert such slave to his own use, or the use of any other person, or to enable such slave to reach some other state or country, where such slave may enjoy freedom, such person shall, on conviction, be punished by confinement in the penitentiary not less than ten years. [a 1843—(39) Sec. 2.] Slave-stealing, &c. How punished.

§ 19. Every person, who shall make or receive any conveyance, deed, or other writing of real or personal property, with intent to delay, hinder, and defraud creditors, shall, on conviction, be fined not less than fifty, nor more than one thousand dollars, and may, at the discretion of the jury, be imprisoned in the county jail for a period not exceeding six months. Making or receiving fraudulent deed. How punished.

§ 20. Every person, who shall remove, or cause to be removed, or aid in the removal, beyond the limits of this state, of any slave or other personal property, mortgaged or conveyed by deed of trust, or deed, or written instrument, in the nature of a mortgage or deed of trust, with a knowledge of the execution of such instrument, and with intent to hinder, delay, or defraud, any person claiming under such deed or instrument, shall, on conviction, be punished by imprisonment in the penitentiary for a term not less than two, and not exceeding five years: to authorize a conviction under this section, it shall not be necessary to prove, that a slave or other property was carried beyond the limits of the state, where it is shown, that the party charged began to remove the slave or other personal property, Removal of property mortgaged, or conveyed by deed of trust, beyond limits of the state, with intent to defraud. How punished.



with intent to carry the same beyond the limits of the state, and was prevented from so doing, either by the slave or other property escaping, or being taken from his possession, before he consummated his intention: *Provided, however,* If it shall appear that the person, so removing, or causing the removal, was an honest purchaser of the same, and only removed it, or caused its removal, with the intent aforesaid, he shall be imprisoned in the penitentiary for a term of two years, and no longer.

**Proviso.** § 21. If the owner of a ship or vessel, or of any property, laden, or pretended to be laden, on board the same, or if any other person concerned in the lading, or fitting out of any such ship or vessel, shall make out and exhibit, or cause to be made out and exhibited, any false or fraudulent invoice, bill of lading, bill of parcels, or other false estimate of any goods or property, laden, or pretended to be laden on board of such vessel, with intent to injure or defraud the insurer of any such vessel or property, or any part thereof, he shall be punished by imprisonment in the penitentiary not less than two, and not exceeding five years.

**Making and exhibiting false bill of lading, &c. to defraud insurer.**

**How punished.**

§ 22. If any master, or other officer, or mariner of any ship or vessel, shall make or cause to be made, or shall swear to any false affidavit or protest, or if any owner or other person concerned in such vessel, or in the goods or property laden on board of the same, shall procure any such false affidavit or protest to be made, (or shall exhibit the same, with intent to injure, deceive, or defraud, any insurer of such ship or vessel, or other goods or property, laden on board the same,) he shall be punished by imprisonment in the penitentiary not less than two, and not exceeding five years.

**Master, &c. of ship or vessel making, or owner of vessel, or lading, procuring false affidavit or protest, to defraud insurer.**

§ 23. If any person shall willfully cast away, burn, sink, or otherwise destroy, any ship or vessel, within the body of any county, with the intent to injure or defraud the owner of such vessel, or the owner of any property laden on board of the same, or any insurer of such vessel or property, or any part thereof, he shall be punished by imprisonment in the penitentiary for a period not less than five, nor more than ten years.

**Destroying ship, or vessel, with intent to injure, or defraud owner, or insurer.**

§ 24. Every person, who shall willfully burn a building, or any goods, wares, merchandise, or chattels, which shall be, at the time, insured against loss or other injury by fire, with intent to charge or injure the insurer, such offender, whether he be the owner of the property burnt or not, shall be punished by imprisonment in the penitentiary for a term not less than five, and not exceeding ten years.

**Burning building, goods, &c. with intent to charge or injure insurer.**

§ 25. Every person, who shall fraudulently or feloniously steal the property of another, in any other state or country, and shall bring the same within this state, may be convicted and punished in the same manner as if such larceny had been committed in this state; and in every such case, such larceny may be charged to have been committed in any county, in or through which, such stolen property may have been brought.

**Stealing property in another state, and bringing it into this. How and where punished.**

§ 26. Every person, prosecuted under the last section, may plead a former conviction or acquittal for the same offence, in another state or country; and if such plea be admitted or established, it shall be a bar to any further or other proceedings against such person for the offence committed, in this state.

**In prosecutions under § 25, former conviction or acquittal may be pleaded.**

§ 27. If any person shall willfully and feloniously mark or brand with a mark or brand, any unmarked or unbranded horse, mare, colt, mule, ass, bull, cow, bullock, ox, heifer, calf, hog, sheep or goat, knowing the same not to be his or her own property, and with

**Marking or branding horses, cattle &c. of another, with fraudulent intent.**



intent to convert the same to his or her own use, the person so offending shall be deemed guilty of larceny, and receive the punishment provided for that offence, according to the value of the property thus marked or branded.

§ 28. If any person shall willfully and feloniously alter or deface the mark or brand of any horse, mare, colt, mule, ass, bull, cow, ox, bullock, heifer, calf, hog, sheep or goat, knowing the same not to be his or her own property, or with intent to convert the same to his or her own use, the person so offending shall be deemed guilty of larceny, and receive the punishment provided for that offence, according to the value of the property, the mark or brand of which was thus altered or defaced. Altering or defacing marks or brands.

§ 29. Every person, who shall falsely represent or personate another, and in such assumed character, shall receive any money or other valuable property of any description, intended to be delivered to the person so personated, shall, upon conviction thereof, be punished in the same manner, and to the same extent, as if he had feloniously stolen the money or property so received. Obtaining money or property, by falsely representing another.

§ 30. Every person, who shall, designedly, by any false pretense, or by any privy or false token, with intent to defraud another, obtain from any person, any money, personal property, or other valuable thing, or shall obtain, with such intent, the signature of any person to any written instrument, the false making whereof shall be forgery, upon conviction thereof, such person shall be punished by imprisonment in the penitentiary, not less than two years, and not exceeding five. Obtaining money, &c. by false pretense, or getting signature of another, with such intent.

§ 31. If any officer, agent or clerk, of any incorporated company, or if any clerk or agent of any private person, or of any copartnership, except apprentices and other persons under the age of eighteen years, shall embezzle or fraudulently convert to his own use, without the consent of his employer or master, any money or property of another, which shall have come to his possession, or be under his care by virtue of such employment, he shall be deemed, by so doing, to have committed the crime of larceny, and punished accordingly. Embezzling by officer, agent, clerk of incorporated Co. private person or partnership.

§ 32. If any carrier, whether by water or land, or other person, to whom any money or other property, which shall be the subject of larceny, shall have been delivered to be carried for hire, shall embezzle or fraudulently convert to his own use, or shall secrete with intent to embezzle or fraudulently convert to his own use, any such money or other property, either in the mass, as the same was delivered, or otherwise, he shall, by such breach of trust, be deemed to have committed the crime of larceny, and punished accordingly.<sup>1</sup> Embezzling by carriers by water or land.

§ 33. If any president, cashier or other officer, agent or servant of any bank incorporated by the legislature of this state, shall embezzle or fraudulently convert to his own use, or shall fraudulently secrete with intent to convert to his own use, any gold or silver money, note, bill, obligation or security, or any other effects or property, belonging to, or in possession of such bank, or belonging to any person, and deposited therein, he shall be deemed, by so doing, to have committed the crime of larceny, and shall be punished as larceny is directed to be punished in this chapter. Embezzling by officer, agent or servant of banks.

<sup>1</sup> See "Penal Law—Embezzling on Steam-boats," &c., § 45 and 46.



Embezzling  
by state treas-  
urer, his  
clerk, &c.

§ 34. If the treasurer, his clerk or other person employed in the treasury of this state, shall commit any embezzlement therein, he shall be deemed guilty of larceny, and punished as that offence is directed to be punished in this chapter.

Indictment  
for embez-  
zling—what  
sufficient.

§ 35. In any prosecution for the offence of embezzling the money, bank bills, notes, checks, drafts or bills of exchange, or other evidences of debt or securities for money of any person, against the provisions of this chapter, it shall be sufficient to allege generally, in the indictment, an embezzlement of money, bank bills, notes, checks, drafts, bills of exchange, or other evidences of debt or securities for money, of or about a certain sum or amount, without specifying any particulars of such embezzlement, or a particular description of the money, bank bills or other security, charged to have been embezzled; and on the trial, evidence may be given of any embezzlement within the times mentioned in the indictment.

Knowingly  
buying, or  
receiving  
embezzled  
money, or,  
property.

§ 36. Every person, who shall buy, or in any way receive, any money or property, knowing the same to have been embezzled or secreted, contrary to the provisions of the foregoing sections relating to embezzlement, with intent to prevent their recovery, or to defraud the rightful owner, shall, upon conviction, be punished in the same manner, and to the same extent, as is prescribed in said sections, upon a conviction for embezzlement.

Forging, al-  
tering, &c.  
evidence of  
debt, issued  
by public of-  
ficer, or  
bank, forge-  
ry in 1st de-  
gree.

§ 37. Every person, who shall make, alter, forge or counterfeit, any note, certificate or other evidence of debt, issued by any officer authorized to issue the same, or any bank bill, or promissory note, draft or check, payable to the bearer thereof, or to the order of any person, issued by any incorporated bank or banking company of this or any other state, district or territory of the United States, or any note, certificate, draft, check or other evidence of debt, issued by authority of any law of the United States, with intent to injure or defraud any corporation, government or individual, shall be deemed guilty of forgery in the first degree.

Forgery, &c.  
of check, &c.  
on bank, or  
state treasur-  
er—1st de-  
gree.

§ 38. Every person, who shall falsely make, alter, forge or counterfeit, any check, draft, bill or warrant, drawn on any bank or banking company, or upon the treasurer of this state, with intent to injure or defraud any person, corporation, or state shall also be deemed guilty of forgery in the first degree.

Forgery, &c.  
of will, deed,  
or other in-  
strument  
conveying  
property, or  
of certificate  
thereon—1st  
degree.

§ 39. Every person, who shall falsely make, alter, forge, or counterfeit, any will of real or personal estate, or any deed, or other instrument, being or purporting to be the act of another, by which any right or interest, or any real property shall be, or purport to be, transferred, conveyed, or any way charged or affected; any certificate of the endorsement or acknowledgment by any person of any deed or other instrument, which by law may be recorded, made, or purporting to be made, by any officer duly authorized to make such certificate or endorsement; or any certificate to the proof of any deed, will, or other instrument, which, by law, may be recorded, made, or purporting to have been made, by any court or officer, duly authorized to make such certificate, with intent to injure or defraud, shall be deemed guilty of forgery in the first degree.

Passing, &c.  
counterfeit  
bank bill, or  
other instru-  
ment named  
in § 38, 39—  
forgery in  
1st degree.

§ 40. Every person, who shall utter, or pass, or tender in payment as true, any false, altered, forged or counterfeit bank bill, or any one of the instruments, securities, or evidences of debt specified in the two preceding sections, knowing the same to be false, altered, forged, or counterfeit, with intent to defraud or injure as aforesaid, shall be deemed guilty of forgery in the first degree.



§ 41. Every person, who shall be convicted of having forged, counterfeited, or falsely altered the seal of this state, or the seal of any public office authorized by law; the seal of any court of record, or the seal of any bank or banking company, duly incorporated by the laws of this state; or who shall falsely make, forge, or counterfeit, any impression purporting to be the impression of any such seal, with intent to defraud, shall be deemed guilty of forgery in the second degree.

§ 42. Every person, who shall be convicted of falsely altering, destroying or falsifying any record of any will, conveyance or other instrument, the record of which shall, by law, be evidence, or any record of any judgment or decree, in a court of record, either of law or equity, the return of any officer to the process of any court, with intent to defraud, shall be deemed guilty of forgery in the second degree.<sup>1</sup>

§ 43. Every person, who shall falsely make, alter, forge, or counterfeit, any bond, bill single, promissory note, bill of exchange, or the acceptance of any bill of exchange, or the endorsement of any bond, bill single, promissory note, or bill of exchange, or any cotton receipt, or receipt for the payment of money, or any other thing, shall, on conviction, be deemed guilty of forgery in the second degree.

§ 44. If any officer, authorized to take the proof or the acknowledgement of any conveyance of real estate, or any other instrument, which by law may be recorded, shall willfully and maliciously certify that any such conveyance or instrument was acknowledged by any party thereto, when, in truth, no such acknowledgment was made, or that any such conveyance or instrument was proved, when, in truth, no such proof was made, or that such acknowledgment or proof was made, on a day other or different from the day in which it was in truth made, with the intent to injure or defraud, or with the intent to enable another person to injure or defraud, in either case, the offender shall, upon conviction, be deemed guilty of forgery in the second degree.

§ 45. Every person, who shall be convicted of having counterfeited any of the gold or silver coin, which shall be, at the time, current by law, usage or custom, within this state, shall be deemed guilty of forgery in the second degree.

§ 46. Every person, who shall be convicted of having made or engraved, or having caused or procured to be made and engraved, any plate in the form or similitude of a promissory note, bill of ex-

Forgery of seal of state, or public office, bank, &c.—2d degree.

Altering, destroying, or falsifying record of any instrument, forgery in 2d degree.

Forgery of bonds, bills single, &c. or endorsements thereon, or cotton receipts, &c.—2d degree.

False certificate of acknowledgment, or probate of deeds &c. by officer, forgery in 2d degree.

Counterfeiting coin—forgery in 2d degree.

Engraving, &c. any plate, in form, or similitude of

<sup>1</sup>Sections 28 and 29, of the act of 1807, "for the punishment of crimes and misdemeanors," (Aik. Dig. 105,) is considered still in force, so far as regards *stealing records, &c.*, if not *embezzling and defacing*—and is therefore inserted:

"§ 28. If any person or persons shall feloniously steal, take away, alter, falsify, or otherwise avoid any record, writ, process, or other proceedings, in any of the courts of this territory, by means whereof any judgment shall be reversed, made void, or not take effect; or if any persons shall acknowledge, or procure to be acknowledged, in any of the courts aforesaid, any recognizance, bail, or judgment, in the name or names of any other person, or persons, not privy or consenting to the same; every such person or persons, on conviction thereof, shall pay a fine not exceeding five hundred dollars, at the discretion of the jury; and may also, at the discretion of the court, receive thirty-nine lashes: *Provided, nevertheless*, That this act shall not extend to the acknowledgment of any judgment or judgments, by any attorney or attorneys, duly admitted for any person or persons, against whom any such judgment or judgments shall be had or given.

§ 29. Every person who shall deface, alter, falsify, or embezzle any record, enrolment or matter, or instrument recorded, or registry thereof, with intent to defraud, shall, upon conviction thereof, pay a fine, not exceeding one thousand dollars, at the discretion of the jury, and be imprisoned a term not exceeding two years."



bank note,  
&c.—forgery  
in 2d degree.

change, draft, check, certificate of deposit, or evidence of debt, issued by any incorporated bank, or banking company within this state, or of any state, district or territory of the United States, without the authority of such bank; or having or keeping in his custody or possession, without the authority of such bank, any impression taken from any such plate, with intent to have the same filled up and completed, for the purpose of being passed, sold or uttered; and of having made or caused to be made, or having in his custody or possession, any plate on which shall be engraved any figures or words, which may be used for falsely uttering any evidence of debt issued by any incorporated bank or banking company, with the intent of having the same used for such purpose, shall be deemed guilty of forgery in the second degree.

What, suffi-  
cient simili-  
tude.

§ 47. Every plate, specified in the last section, shall be deemed to be in the form and similitude of the instrument imitated, when the engraving on such plate resembles or conforms to such parts of the genuine instrument as are engraved.

All other  
forgeries—  
3d degree.

§ 48. All forgeries, the punishment of which is not provided for in any of the preceding sections, shall be deemed forgery in the third degree.

Uttering or  
publishing as  
true, forged  
or counter-  
feit instru-  
ments, or  
coin.

§ 49. Every person, who shall be convicted of having uttered and published as true, and with intent to defraud, any forged, altered, or counterfeit instrument or other writing, or any counterfeit gold or silver coin, the forging, uttering or counterfeiting of which is declared by this chapter to be an offence, knowing such instrument or coin to be forged or counterfeited, shall suffer the punishment herein before assigned, for the forging, uttering or counterfeiting the instrument or coin so uttered; but if it shall appear on the trial of the indictment, that the accused received such forged, altered, or counterfeit instrument, or other writing, or gold or silver coin, of another person, in good faith, and for a valuable consideration, without any circumstances to justify a suspicion of its being forged or counterfeited, and he afterwards acquire a knowledge of its spuriousness, and shall utter and publish the same as true, he shall be deemed guilty only of forgery in the third degree, and punished accordingly.

What evi-  
dence shall  
mitigate.

Punishment  
for forgery in  
1st degree:  
2d degree:  
3d degree.

§ 50. Forgery in the first degree shall be punished by imprisonment in the penitentiary, for a period not less than ten, and not exceeding twenty years: Forgery in the second degree shall be punished by imprisonment as aforesaid, for a term not less than five, and not exceeding ten years: And forgery in the third degree, for a period not less than two, and not exceeding five years.

Alteration,  
or obliteration  
of instru-  
ment,  
with fraudu-  
lent intent—  
what offence

§ 51. The total alteration or obliteration of any instrument or writing, with intent to defraud, by which any pecuniary obligation, or any right, interest or claim to property shall be intended to be created, increased, discharged, diminished, or in any manner affected, shall be deemed forgery, in the same manner and in the same degree, as the false alteration of any part of such instrument or writing.

What deem-  
ed a written  
instrument.

§ 52. Every instrument, partly printed and partly written, with a written signature thereto, and every signature of an individual, firm, or corporate body, or of any officer of such body, and every writing purporting to be such signature, shall be deemed a writing, and a written instrument, and may be the subject of forgery in the meaning of the provisions of this chapter; and where different parts of several genuine instruments shall be so placed or connected together as to produce one instrument, with intent to defraud, the same shall be deemed forgery in the same manner and in the same degree, as if the parts so put together were falsely made or forged.

Part of genu-  
ine instru-  
ments put  
together with  
intent to de-  
fraud—forg-  
ery.

§ 53. If any person shall make, forge or counterfeit, with intent



to defraud, any evidence of debt issued, or purporting to have been issued, by any corporation having authority for that purpose, to which shall be affixed the printed signature of any person as agent or officer of such corporation, it shall be deemed forgery in the same degree, and in the same manner, as if such person was, at the time, an officer or agent of such corporation; notwithstanding there never was any such person in existence.

Forgery of instrument issued by corporation, with printed signature.

§ 54. Wherever, by any of the foregoing provisions, an attempt to defraud is required to constitute forgery, it shall be sufficient if such intent appear to defraud the United States, any state or territory thereof, any body corporate, any county, city, town or village, or any public officer in his official capacity, any copartnership, or any one of such partners, or any person whatever; and it shall be sufficient to allege in the indictment an intent to defraud, without naming therein the particular person, state, government, or body corporate, intended to be defrauded.

What, evidence of intent to defraud, on indictments for forgery.

Such intent, how charged in indictment.

§ 55. Every person, who shall enter any dwelling-house, store-house, smoke-house, kitchen, stable, shop, ware-house, steam-boat, ship or other water craft, and therein commit the crime of larceny, and shall be thereof convicted, shall be punished by imprisonment in the penitentiary not less than three nor more than six years.

Larceny in dwelling-house, &c. or steam-boat, or other vessel.

§ 56. Every person, who shall commit the crime of larceny, by stealing from any building that is on fire, or by stealing any property removed in consequence of an alarm caused by fire, or by stealing from the person of another, shall be punished by imprisonment in the penitentiary not less than three nor exceeding six years.

From building, on fire, or of property removed, &c.

§ 57. Every person, who shall commit the offence of larceny, by stealing any money, goods, or chattels, or any bank note, bond, promissory note, bill of exchange, or other bill, order, or any deed or writing, containing a conveyance of land, or other property, or any other valuable contract in force, or any writ, process, or public record, or any other evidence of debt, or any public security of the United States, or of this state, if the property stolen shall exceed the value of twenty dollars, shall be deemed guilty of grand larceny, and punished by imprisonment in the penitentiary not less than two nor exceeding five years.

Grand larceny—what.

How punished.

§ 58. Every person, who shall commit the offence of larceny, by stealing any money or other thing made the subject of larceny by the preceding section, when the property stolen shall be of the value of twenty dollars, or less, shall be deemed guilty of petit larceny, and punished by imprisonment in the county jail, not exceeding three months, and fined not more than one hundred dollars; and for the second offence shall be committed to the penitentiary for the term of two years.

Petit larceny—what.

How punished—for 1st offence: 2d offence.

§ 59. Whenever a jury shall find the accused guilty of larceny, it shall be their duty to ascertain the precise value of each article stolen, and the court trying the offender shall render judgment against him, in favor of the owner, for the assessed value, unless such stolen property has been or shall be returned.

Jury to assess value of stolen goods, on conviction.

§ 60. Every person who shall buy, receive, conceal, or aid in the concealment of any of the subjects of larceny mentioned in the preceding sections, knowing the same to have been stolen, and with intent to defraud the owner, and be thereof convicted, shall be imprisoned in the penitentiary not less than two nor more than five years.

Buying, receiving, concealing, &c. stolen property.

§ 61. It shall be competent to indict for the offence of buying, concealing, receiving, or aiding in the concealment of money, or

Accessories may be in-



dicted, tho' principal not tried.

Horse stealing, &c.

What sufficient indictment.

Receiving or buying stolen horses.

How punished.

Burglary—how punished.

Arson in the 1st degree.

Arson in the 2d degree.

Arson in the 3d degree.

other property, although the principal offender may not have been tried or convicted.

§ 62. If any person shall feloniously steal or take away, any horse, mare or gelding, foal or filly, ass or mule, the person so offending shall, upon conviction, be punished by imprisonment in the penitentiary not less than three and not exceeding seven years; and in an indictment for such larceny, it shall not be necessary to designate the particular sex or character of the animal stolen, but it shall be enough to describe it by such general designation, as, in common understanding of mankind, embraces it.<sup>1</sup>

§ 63. If any person or persons shall receive or buy any horse, mare or gelding, foal or filly, ass or mule, that shall have been feloniously taken or stolen from any other person, knowing the same to have been stolen, with intent to defraud the owner, he shall be punished in the same manner as the principal thief.

§ 64. Every person, who shall commit the crime of burglary, and be thereof convicted, shall be punished by imprisonment in the penitentiary for a term not less than three, nor more than fifty years.

§ 65. Every person, who shall willfully and maliciously, and with an intent to destroy human life, set fire to, or burn in the night, a dwelling-house or house adjoining thereto, in which dwelling-house there shall be, at the time, some human being, shall be deemed guilty of arson in the first degree; and every house, prison, or other edifice, which shall be occupied by persons lodged therein at night, shall, within the meaning of this section, be considered a dwelling-house.

§ 66. Every person, who shall willfully and maliciously set fire to, or burn, in the day time, any inhabited dwelling-house, which, if committed in the night time, would be arson in the first degree, shall, upon conviction, be adjudged guilty of arson in the second degree; and every person who shall willfully and maliciously set fire to, or burn, any meeting-house, church, court-house, town-house, college, academy, jail, or other building erected for public use, or any banking-house, ware-house, cotton-house, gin-house, store, manufactory, or mill, being, with the property therein contained, of the value of five hundred dollars; or any barn, stable, shop, or office, of another person, within the curtilage of any dwelling-house, or any other building, by the burning whereof any building mentioned in this section shall be burnt, such offender shall be adjudged guilty of arson in the second degree.

§ 67. Every person, who shall willfully and maliciously set fire to, or burn, any other house or out house, other than those mentioned in the preceding sections, any bridge, lock, steam-boat, keel-boat, ship, or other water craft, lying within the body of any county, such as is used, either in ascending or descending our rivers, or for the purpose of transporting produce, merchandise, or any other thing,

<sup>1</sup> It is thought proper to annex § 22 of the act of 1807, "for the punishment of crimes and misdemeanors," (Aik. Dig. 104,) as being still in force:

"§ 22. Every person, who shall be convicted of stealing any neat cattle, hog, sheep or goat, shall, for every such animal so stolen, forfeit and pay to the owner the value thereof; and also a fine of twenty dollars to any person suing for the same, to be recovered in any court in this territory, having cognizance thereof; and moreover, the offender shall receive on his bare back twenty-five lashes well laid on, for the first offence, and for every succeeding offence, he shall receive on his bare back thirty-nine lashes well laid on, and stand in the pillory two hours."



either in ascending or descending our rivers, or upon other navigable water within this state, shall be deemed guilty of arson in the third degree.

§ 68. Arson in the first degree shall be punished by imprisonment in the penitentiary for a term not less than fourteen years; arson in the second degree shall be punished by imprisonment in the penitentiary for a term not less than seven, and not exceeding fourteen years; and the third degree of that offence shall be punished by imprisonment as aforesaid, for a period not less than three, and not exceeding seven years.

§ 69. Every person, who shall wantonly injure, or place any impediment, or obstruction, on any rail-road in this state, in use for the transportation of passengers or merchandise, and be thereof convicted, shall be fined not less than one hundred, nor more than five hundred dollars, and may also be imprisoned not exceeding three months.

§ 70. Every one, who shall negligently place any impediment, or obstruction, on any rail-road in this state, in use for the transportation of passengers or merchandise, and be thereof convicted, shall be fined, not less than fifty nor more than two hundred dollars.

## CHAPTER V.

### *Of Offences against Public Justice.*

§ 1. Every person, who shall willfully and corruptly swear or affirm falsely, in regard to any material matter or thing, upon any oath, or affirmation, which shall be required or authorized by law, shall be deemed guilty of perjury.

§ 2. Every person, charged with perjury committed on the trial of any indictment for a capital offence, or for any other felony, shall, on conviction thereof, be punished by imprisonment in the penitentiary, for a period, not less than seven, nor exceeding twenty years; and perjury, committed under any other circumstances, or upon any other occasion, shall be punished by imprisonment in the penitentiary, for a term not less than two, nor exceeding five years.

§ 3. Every person, who shall unlawfully and corruptly procure another to swear falsely, in any case or upon any occasion, in or concerning which perjury may be committed, such person shall be adjudged guilty of subornation of perjury, and, on conviction thereof, shall be punished, by imprisonment in the penitentiary, for the period for which the party suborned was liable to be imprisoned.

§ 4. Every person, who shall corruptly promise or give to any executive, legislative or judicial officer, after his election or appointment, either before or after he shall have been qualified, or shall have taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision or judgment, on any matter, cause or proceeding, which may be then pending, or may, by law, come or be brought before him in his official capacity, shall be punished by imprisonment in the penitentiary, not less than two, and not exceeding ten years.

§ 5. Every executive, legislative or judicial officer, who shall corruptly accept any gift or gratuity, or any promise to make any gift, or to do any act beneficial to such officer, under an agreement, or with an understanding, that his vote, opinion, or judgment, shall be given in any particular manner, or upon any particular side of



any question, cause or proceeding, which is or may be by law brought before him in his official capacity; or if, in such capacity, he shall make any particular appointment, shall be punished by imprisonment in the penitentiary, not less than two, and not exceeding ten years.

How punished.

Bribery in other cases.

§ 6. Every person, who shall corrupt any of the ministerial officers of the courts of law or chancery, any auditor, juror, arbitrator, umpire or referee, by giving, offering or promising any gift or gratuity whatever, with intent to bias the mind or influence the decision of such ministerial officer of the courts of law or chancery, any auditor, juror, arbitrator, umpire or referee, in relation to any cause or matter, which is pending in either of said courts, or before any inquest for the decision of which such arbitrator, umpire or referee, shall have been chosen or appointed, shall be punished by imprisonment in the penitentiary, not less than two, and not exceeding five years; in order to the conviction of the party charged with corrupting a juror as aforesaid, it shall not be necessary that such juror should actually have been sworn or qualified, but shall be sufficient, if such juror shall have been summoned, upon a writ issued for that purpose, under the authority of law, or otherwise under legal authority, to attend the court.

How punished.

What necessary to conviction.

Receiving bribe in such cases.

§ 7. If any person, summoned as a juror, or appointed an auditor, arbitrator, umpire or referee, or if any ministerial officer, either in the courts of chancery or law, shall corruptly take any thing to give his verdict, award or report, or shall corruptly receive any gift or gratuity whatever, he shall be punished by imprisonment in the penitentiary, not less than two, and not exceeding five years.

How punished.

Sheriff, or other officer, corruptly summoning jury.

§ 8. If any sheriff or other officer, intrusted by law with a discretion in summoning jurors, shall, whether by agreement, or otherwise, with any party to any cause pending in court, or with his agent or attorney, summon any juror, with intent to produce a result favorable to either party, such sheriff, or other officer, shall, on conviction thereof, be punished by imprisonment in the penitentiary, not less than two, and not exceeding five years.

How punished.

Bribery of sheriff, or other officer, summoning a jury.

§ 9. If any person shall, by any promise, gift or gratuity, induce any sheriff, or other officer, to summon a juror or a jury, with a view to produce a result favorable to either party, in any cause pending in any circuit or county court, or other tribunal, such person shall be as guilty as the sheriff, coroner or other officer would be, and punished by imprisonment in the penitentiary, for a term not less than two, and not exceeding five years.

How punished.

Sheriff, or coroner, conniving at offence, described in § 8, 9.

§ 10. Any sheriff, or in the event of a vacancy in the office of sheriff, the coroner, who shall be privy to, and connive at the commission of the offence described in the two preceding sections, by any bailiff attending the court, or by any deputy-sheriff, shall be deemed as guilty as the principal offender, and receive the punishment prescribed as aforesaid.

Falsely personating another in becoming bail, or surety, confessing judgment, acknowledging conveyance, &c.

§ 11. Every person, who shall falsely personate another, and in such assumed character, become bail, or surety for any party in any proceeding, civil, or criminal, before any court, or officer, authorized to take such surety, or confess any judgment, or acknowledge the execution of any conveyance, or of any other instrument which by law may be recorded, or do any other act, in the course of any suit, proceeding or prosecution, whereby the person, so represented or personated, may be made liable, in any event, for the payment of any debt, damages, costs, or sum of money, or his rights or interests



in any way be affected, shall, upon conviction, be punished by imprisonment in the penitentiary, for a period, not less than two, and not exceeding ten years. How punished.

§ 12. If any sheriff, jailer, coroner, constable or other officer, or other person, having the legal custody of any person, charged with or convicted of a criminal offence, shall voluntarily suffer and permit the person so charged or convicted, to escape, he shall, on conviction, be punished by imprisonment in the penitentiary, not less than two, and not exceeding twenty years. Sheriff, &c. voluntarily suffering prisoner to escape.

§ 13. If any sheriff, jailer, constable, coroner or other officer, shall, through negligence, suffer any prisoner, in his custody, upon a conviction, or upon any criminal charge, to escape, he shall, on conviction, be fined not less than two hundred and not exceeding one thousand dollars. Negligent escape.

§ 14. If any sheriff, jailer, coroner, or constable, shall willfully and corruptly refuse to execute any lawful process, directed to them or any of them, requiring the apprehension or confinement of any person charged with a criminal offence, or shall willfully and corruptly omit to execute such process, by which such person shall escape, or shall willfully and corruptly refuse to receive in any jail under his charge, any offender lawfully committed to such jail, and ordered to be confined therein, on any criminal charge or conviction, or on any lawful process whatever, he shall be punished by fine, not less than five hundred, and not more than two thousand dollars. How punished.

§ 15. If any jailer, or other officer, shall willfully refuse to receive into his custody any prisoner, lawfully committed thereto on any criminal charge, or conviction, or on any lawful process on any criminal charge whatsoever, and be thereof convicted, he shall be fined in any sum not exceeding five hundred dollars. Refusing to take into custody person committed on any criminal charge.

§ 16. Every person, who shall convey into any county jail, or other place of confinement, other than the penitentiary, any disguise, instruments, arms, or other thing, useful to aid any prisoner in his escape, with intent thereby to facilitate the escape of any prisoner, lawfully committed to or detained in such jail, or other place, for any felony whatever, whether such escape be effected, or attempted or not, shall, upon conviction, be punished by imprisonment in the penitentiary, not less than two, and not exceeding ten years; and every person, who shall, by any act done, aid, or assist any prisoner, lawfully detained in any county jail, or other place of imprisonment, as aforesaid, for any felony, to escape therefrom, whether such escape be effected or not, shall, upon conviction, be punished by imprisonment, as above provided in this section. Furnishing prisoner in jail, &c. instruments or other means of escape, when charged with felony.

§ 17. Every person, who shall, by any act done, aid or assist any prisoner lawfully committed to any county jail, or other place of confinement, or in execution of a conviction for any offence other than a felony, whether such escape be effected or not, or who shall convey into such jail, or place of confinement, any disguise, instrument, arms, or other thing, useful to facilitate the escape of any prisoner so committed, with intent to facilitate his escape, whether such escape be effected, or attempted, or not, shall be punished by fine not exceeding one thousand dollars. Aiding prisoner charged with less offence than felony, to escape.

§ 18. Every person, who shall, by any act, aid or assist any prisoner in escaping or attempting to escape, from the custody of any sheriff, coroner, constable, or other officer or person, who shall have the lawful charge of such prisoner, upon any criminal charge or conviction, shall, upon conviction, be punished in the same manner Aiding escape from custody of officer—how punished.



as if he had aided or assisted in an escape, or attempt to escape, from the county jail: *Provided*, That, if the party escaping, or attempting to escape, was in custody under a charge of any capital offence, or on conviction for such offence, the person aiding or assisting his escape, or attempt to escape, shall be punished by imprisonment in the penitentiary, for a period not less than two, and not exceeding fourteen years.

Prisoner escaping from jail may be re-imprisoned, tho' term of imprisonment has expired. § 19. If any prisoner, confined in a county jail upon a conviction for a criminal offence, shall escape therefrom, he may be pursued, retaken, and imprisoned again, notwithstanding the term, for which he was sentenced to be imprisoned, may have expired, at the time when he shall be retaken, and he shall remain so imprisoned, until he be discharged by a due course of law, and the period, elapsing between his escape and arrest, shall not be computed as a satisfaction *pro tanto*, of the term for which he was sentenced to imprisonment.

Resisting execution of process. § 20. If any person or persons shall knowingly and willfully resist or oppose any officer of this state, in serving or attempting to serve, or execute, any legal writ or process whatsoever, he shall, on conviction thereof, be fined not less than fifty and not exceeding one thousand dollars.

Master concealing or carrying away slave guilty of capital crime, or so charged. § 21. Every master or other person, having in charge a slave, guilty of any capital crime, who shall conceal, or cause to be concealed, or carry away, or cause to be carried away, such slave, such master, or other person having him in charge, being informed of the commission of such crime, and intending by the concealment or carrying away of such slave, to prevent him from being brought to justice; and every master or other person having in charge a slave, who shall conceal, or cause to be concealed, or carry away or cause to be carried away, such slave charged with the commission of a capital crime, shall, on conviction of either of the foregoing offences, be fined in the sum of one thousand dollars, or imprisoned in the penitentiary, not less than two years, at the discretion of the jury trying the same.

How punished. Compound- ing, or conceal- ing capital crime, or other felony. § 22. Every person, having a knowledge of the commission of an offence punishable by death, or by imprisonment in the penitentiary, who shall take any money, or property of another, or any gratuity or reward, or engagement or promise therefor, upon any agreement or understanding, express or implied, to compound, or conceal any such crime, or to abstain from any prosecution therefor, shall, upon conviction, be fined in a sum not exceeding two thousand dollars.

How punished. Conspiracy to commit offence, or falsely and maliciously to indict another, or to cheat, or obtain money or property by false pretenses, &c. § 23. If two or more persons shall conspire either to commit any offence, or falsely and maliciously to indict another for an offence, or to procure another to be charged or arrested for any offence, or falsely to move or maintain any suit, or to cheat and defraud any person of any property by any means in themselves criminal, or to cheat and defraud any person of any property, by any means which would amount to a cheat, or to obtain any money or property by false pretenses, or to commit any act injurious to the public health, to public morals, to trade or commerce, or for the perversion or obstruction of justice, or the due administration of the laws, they shall, upon conviction, be deemed guilty of a misdemeanor, and be punished by fine or imprisonment in the county jail, or both, according to the circumstances of the case; but the fine, in no case, shall exceed one thousand dollars, and the imprisonment, in no case, shall exceed six months.

How punished.



§ 24. No agreement, except to commit a felony upon the person of another, or to commit the crime of arson in the first degree, or burglary, shall be deemed a conspiracy, unless some act, besides such agreement, be done to effect the object thereof. What deemed a conspiracy.

§ 25. No other conspiracies, than such as are enumerated in the two sections last preceding, shall be punished criminally. What conspiracies punished criminally.

§ 26. If any justice of the peace, clerk, sheriff, or other officer, authorized by the laws of this state to receive fees or perquisites for services rendered by him in his official capacity, shall knowingly take other or greater fees than are by law allowed for any service done or to be done by him, or shall demand and take any fees for services not actually rendered, or to be rendered, the officer, so offending, shall be deemed guilty of extortion, and, on conviction, shall be fined in a sum not less than twenty, nor more than five hundred dollars. Extortion defined. How punished. a See "Fines," § 9.

§ 27. If any justice or conservator of the peace, upon view of any breach of the peace, or any other offence proper for his cognizance, shall require any person to apprehend and bring before him the offender, every person so required, who shall refuse or neglect to obey such justice or conservator of the peace, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not less than fifty, and not exceeding three hundred dollars; and every one assaulting and beating, or resisting such person acting in obedience to the command of such justice or conservator of the peace, with a knowledge of such command, shall be guilty in the same manner as if he had assaulted and beat, or resisted an officer in serving or executing legal process, and on conviction of either of these offences, shall receive the punishment thereto annexed by the preceding provisions of this chapter. Refusal or neglect to apprehend offenders, when required by justice, how punished. Assaulting or resisting such person, how punished.

## CHAPTER VI.

### *Of Offences against the Public Morals.*

§ 1. No cruel or unusual punishment shall be inflicted on any slave, and any master, or other person having charge of a slave, who shall be guilty of inflicting such punishment, or authorizing or permitting the same, shall be subject to indictment therefor, and, on conviction thereof, be punished by a fine not less than fifty and not exceeding one thousand dollars; and, in addition thereto, be required to give security for his good behavior, for the space of twelve months. No cruel, or unusual punishment to be inflicted on slaves. Penalty.

§ 2. Every person, who shall willfully administer to any pregnant woman any medicines, drugs, substance or thing whatever, or shall use and employ any instrument or means whatever, with intent thereby to procure the miscarriage of such woman, unless the same shall be necessary to preserve her life, or shall have been advised by a respectable physician to be necessary for that purpose, shall, upon conviction, be punished by fine not exceeding five hundred dollars, and by imprisonment in the county jail, not less than three, and not exceeding six months. Administering medicine, drugs &c. to pregnant woman to produce abortion. How punished.

§ 3. If any man and woman shall live together in adultery or fornication, each of them shall be deemed guilty of a misdemeanor, and shall, upon the first conviction, be fined in a sum not less than one hundred dollars, and may, at the discretion of the court before whom such offenders are tried, be imprisoned for a term not exceed- Adultery & fornication. How punished on 1st conviction:



on 2d conviction :

on 3d conviction.

Polygamy defined.

How punished.

Who not embraced in § 4.

Incest.

How punished.

Crime against nature.

How punished.

Playing with cards, dice, &c., at any tavern &c.

How punished.

Keeper or proprietor of such house, suffering such gaming &c.

How punished.

Attorney-general, or solicitor, may summon witness to go before grand jury and testify against gamblers.

ing six months; on a second conviction for adultery or fornication, the offenders shall be fined in a sum, not less than three hundred dollars; and, at the discretion of the court trying the case, may be imprisoned in the county jail, not exceeding twelve months; and upon a third, or any subsequent conviction, the offender shall be punished by imprisonment in the penitentiary two years.

§ 4. If any person, who has a former wife or husband living, shall marry another; or if he or she continue to cohabit with such second husband or wife in this state, he or she shall, except in the cases mentioned in the following section, be deemed guilty of polygamy, and shall be punished by imprisonment in the penitentiary, not less than two, and not exceeding five years.

§ 5. The provisions of the preceding section shall not extend to any person whose husband or wife shall have continually remained absent for the space of five years together, the party marrying again not knowing the other to be living within that time; nor to any person, by reason of any former marriage, that shall have been dissolved by the decree of a competent court, when he or she was not the guilty cause of such divorce.

§ 6. Persons, within the degrees of consanguinity or relationship within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall live in a state of adultery with each other, knowing of such consanguinity, shall, upon conviction, be punished by imprisonment in the penitentiary not less than two, and not exceeding seven years.

§ 7. Every person, who shall commit the abominable and detestable crime against nature, either with mankind or with any beast, shall be punished by imprisonment in the penitentiary not less than two, nor exceeding ten years.

§ 8. If any person shall play at any tavern, inn, store-house for retailing spirituous liquors, or house or place where spirituous liquors are retailed, or given away, or any public house or highway, or any other public place, or in any out house where people resort, at any game or games, with cards or dice, or with any other device or substitute for cards or dice, such person, so offending, shall, on conviction thereof, be fined in a sum not less than twenty and not exceeding fifty dollars.

§ 9. Every tavern-keeper, or proprietor, or superintendent of any other public house, or owner or proprietor of any out house where people resort, or retailer of spirituous liquors, who shall knowingly suffer any game, inhibited by the preceding section, to be exhibited or played in his tavern, inn, or house for retailing spirituous liquors, or in any house or shelter apartment thereto, or any other public place or out house where people resort, shall, upon conviction, be fined not less than fifty and not exceeding three hundred dollars.

§ 10. The attorney-general and the several solicitors of this state shall have the power, and it shall be their duty, to send a summons to any person or persons, in the name of such solicitor or attorney-general, directing them to come before the grand jury of the proper county, and to give evidence of any gaming in violation of the laws of this state against that offence; and the person or persons so summoned shall not be liable or subject to an indictment, for any offence of which he may have given evidence; and the attorney-general, and the several solicitors, are authorized to issue a summons as aforesaid, not only while the grand jury is in session, before which the witness may be required to testify, but at any time previous to the sitting of the court at which they are to be impaneled; and if



any person shall fail or refuse to attend and testify in obedience to such summons, he shall be liable to indictment, and, on conviction, shall be fined in any sum not less than twenty nor exceeding five hundred dollars, and sentenced to a term of imprisonment not exceeding three months: *Provided*, All reasonable excuses shall be heard.

Failure of witness to attend—how punished.

§ 11. On the prosecution of any person for gaming, against the provisions aforesaid, it shall be sufficient for the indictment to charge that the person or persons, so offending, did play at cards or dice, or some device or substitute for cards or dice, (as the case may be,) in some of the places above specified, without stating what description of game, or without stating that money, or any other thing, was bet or staked upon such gaming; and upon making proof of the charge, as laid in the indictment, the offence shall be complete without proving what the game was or is called, and without proving that any thing was bet upon the event of such game.

What sufficient indictment for gaming.

What proof sufficient.

§ 12. If any person shall hereafter be guilty of keeping or exhibiting any gaming table, called A B C or E O, or roulette, or rowley powley, or *rouge et noir*, or thimbles, sometimes called three ticket lottery, or chucker luck, or faro bank; or shall keep and exhibit any other gaming table, or bank of the like kind, or of any other description, under any other name or denomination, or without any name therefor, or shall, in any manner, be interested or concerned in the keeping, exhibiting or carrying on, any such table, bank, or game, each and every person, so offending, and being thereof convicted, shall be punished by imprisonment in the penitentiary for two years.

Keeping or exhibiting gaming table

How punished.

§ 13. It shall be the duty of the judges of the circuit and county courts, justices of the peace, sheriffs and constables, mayor, aldermen and other police officers of cities, and the municipal or police officers of towns, who shall receive information, or shall have good cause to believe that any person is guilty of any of the offences created by the preceding section, to cause such person so suspected to be arrested, and brought before such judge, justice or some other officer or magistrate having jurisdiction in the premises, and if, on examination, the said judge, justice or magistrate, before whom such suspected person shall be taken, shall be of opinion that he is guilty of the charge alleged against him, said judge, justice or magistrate shall bind him, in a recognizance with good and sufficient sureties, to appear at the next term of the circuit court of the proper county, to answer such charge; and further, that he will not, in the mean time, be guilty of the like offence, and, in default of giving the surety required, he shall be committed to the jail of the county for safe keeping.

Duty of judges, justices, sheriffs, constables &c. in relation to offences embraced in preceding section.

§ 14. If any person shall bet or be concerned in betting at any of the gaming tables or banks before mentioned or particularly described, or referred to in general terms, such person shall, upon conviction, be fined in a sum not exceeding one hundred dollars.

Betting at gaming tables—how punished.

§ 15. In all prosecutions for offences under the preceding sections, it shall be sufficient for the indictment to charge that the person indicted did keep the gaming table or bank, particularly or generally described as aforesaid, for gaming, without proving that any money or other thing was won or lost, or bet upon such gaming table or bank; and to allege that the person charged was interested or concerned in keeping, exhibiting, and carrying on such table, game or bank, without setting forth the particular manner in which the defendant was concerned; and it shall be sufficient in an indictment

Indictment for keeping, or exhibiting, or betting at, gaming table, what sufficient.



ment for betting, and being concerned in betting at, or keeping, or being concerned in keeping, or carrying on any gaming table or bank, either particularly described or referred to in general terms as aforesaid, to describe the table or bank by its name, (if known) if not known, then by a table or bank the name of which is unknown; and the several solicitors in this state, the attorney-general and grand jury, shall have power, under the direction of the court, to compel the attendance of witnesses, in the same manner as is prescribed in a preceding section of this chapter.

Owner or occupant of house, suffering said tables or banks to be kept or exhibited therein—how punished. Proviso.

§ 16. If any owner or occupant of any house, out-house, or other building, booth or tent, shall knowingly permit or suffer any of the tables or banks particularly or generally described as aforesaid, to be carried on or exhibited in his house, out house, or building, booth or tent, and be thereof convicted, he shall be fined in a sum not exceeding two thousand dollars: *Provided, always*, That, if the owner or occupant of any house, out-house, or other building, booth or tent, shall give information to any judge or justice of the peace of the proper county, against any person keeping, exhibiting or concerned or interested in said table or bank, within six days after the same comes to his knowledge, he or they, so informing, shall not be liable to the penalties of this section.

Money, or property, lost at gaming, may be recovered back

§ 17. If any person shall, by playing at cards, dice, or any other game, or by betting on the sides or hands of such as are gaming, lose to any person so playing or betting, any sum of money, or other goods whatever, and shall pay or deliver any part thereof, to the winner, the person so losing, or paying, or delivering the same, may sue for and recover such money, in an action for money had and received for the use of the plaintiff, and such goods, in an action of trover or detinue, according as the possession may or may not be with the winner, at the time of the action brought: *Provided, however*, That neither of the aforesaid actions shall be maintained, by the loser of such money or goods, unless the same shall be brought within six months from the time of the payment or delivery of the goods.

But action must be bro't within 6 mos. from time of payment.

Oath of pl'ff, in action bro't under § 17, sufficient to recover, unless def't denies on oath.

§ 18. If any action shall be brought, as provided in the preceding section, by the person so losing any money, or goods, against the person winning the same, when it shall appear from the declaration, that such money, or goods, came to the hands of the defendant by gaming, if the plaintiff, when required by the court, before whom the cause is tried, to establish his cause of action, shall make oath that the said money, or goods, were lost by gaming with the defendant, as alleged in the declaration, the plaintiff shall recover the amount of such money, or goods, unless the defendant will make oath, that he did not obtain the same by gaming; and if he shall so discharge himself, he shall recover of the plaintiff his costs: *Provided*, That the plaintiff may, upon being required by the court to establish the allegations of his declaration, refuse to testify at his election, and if he so refuse, he may maintain and prosecute his action according to the usual course of proceedings in such actions at common law.

But pl'ff may refuse to testify in such cases.

Keeping billiard table in house for retailing liquor

§ 19. Every person, who shall keep a billiard-table in connection with a house where spirituous liquors are retailed, as an appendage thereto, shall, on conviction, be fined in a sum not less than two hundred, and not exceeding five hundred dollars.

Lottery without leave of legislature.

§ 20. If any person shall, without special permission from the legislature, set up any lottery to raise and collect money, or for the sale or distribution of any property, he shall, on conviction, be fined



not less than one hundred, and not exceeding two thousand dollars.

§ 21. Every person, who shall knowingly commit any fraud in the packing or baling of cotton, by placing good cotton on the outside of such bale, commonly called plating, when the interior part thereof is composed of inferior cotton, or by putting and mixing with the cotton contained in the bale, any other material or substance than ginned cotton, and be thereof convicted, shall be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned not exceeding three months.<sup>1</sup>

§ 22. Every person, who shall be guilty of a fraud by mixing sand, or other matter or thing with sugar, so as to deteriorate the quality thereof, with intent to injure or defraud the purchaser of the same, and be thereof convicted, shall be fined not less than twenty, nor more than two hundred dollars, and may be imprisoned not more than thirty days.<sup>2</sup>

§ 23. Every person, who shall hereafter make any bet, or wager of money, or other thing of value, upon any election in this state, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not less than fifty, and not exceeding five hundred dollars; and if the person, who shall thus make a bet or wager, of money or other thing of value, be a sheriff, coroner, constable, or other person who may be concerned in holding, conducting, or making any election, as an officer, judge, clerk, or otherwise, he shall, in addition to the fine above prescribed, be imprisoned at the discretion of the jury trying the offence, in the county jail, for a period not exceeding six months.

## CHAPTER VII.

### *Of Miscellaneous Offences.*

§ 1. It shall be unlawful for any person or persons, or any company, corporation, or unchartered banking association, to make, emit, issue, or put in circulation, any note, bill, bond, draft, check, or post note, or paper of any name or description whatsoever, to answer the purpose of money, or for general circulation, and for every such note, bill, bond, draft, check, post note, or other paper, so made, emitted, issued, or put in circulation, such person or person

No person, company, corporation, or unchartered association to issue or put in circulation, notes, bills, &c., as a substitute for money.

<sup>1</sup> The third section of "An Act for the government of gin-holders, and for other purposes," Nov. 16th, 1818, (Aik. Dig. 112.) gives the following remedy for exhibiting a false sample of cotton:

"§ 3. Any and every person or persons, who shall be guilty of furnishing or exhibiting any false sample of any baled cotton, by him, her, or them offered for sale, shall be liable to a penalty of one hundred dollars, to be recovered by action of debt in any court of record, in addition to such damages as may be sustained by the purchaser or purchasers, of such cotton so falsely represented; and the one half of such penalty shall accrue to the use of the territory, and the other half to the use of the party who shall sue for the same."

<sup>2</sup> The sixth section of "An Act to prevent frauds in the sale of oil, and for other purposes," Jan. 9th, 1833, (Aik. Dig. 112.) gives a *qui tam* action, which is not taken away:

"§ 6. Should any person or persons, hereafter, be injured by the fraudulent packing or sale of brown sugar, as mentioned in the foregoing section of this act, he, she, or they, so injured, his, her, or their attorney, shall have and be entitled to a *qui tam* action against the party so offending, in which action the damages shall never be less than five hundred, nor more than two thousand dollars; one half to go to the use of the party injured, and one half to the use of the state."



sons, and each and every individual of said company, corporation, or unchartered banking association, so making, issuing, emitting, or putting in circulation, such note, bill, bond, draft, check, post note, or other paper, shall be held to be guilty of a misdemeanor, and shall be liable to be indicted therefor, and, upon conviction, shall be fined for every such offence, at the discretion of the jury trying the same, not less than one hundred, nor more than five hundred dollars, and, upon failure to pay the fine, shall be imprisoned in the county jail for a term not exceeding twelve months.

Penalty.

Signing such note, bill, &c. as pre-ident, cashier, or otherwise, for any such company.

§ 2. If any person or persons shall sign any note, bill, bond, draft, check, post note, or any paper of other name or description whatsoever, as cashier, or president, or under any other name, or in the name of any company, incorporation, or unchartered banking association, to be put in circulation to answer the purposes of money, such president, or cashier, or other person, under any other name, so signing said note, bill, bond, draft, check, post note, or paper as aforesaid, shall be deemed guilty of a misdemeanor, and shall be liable to be indicted, and, upon conviction, shall be fined for every such offence, in a sum not less than one hundred, nor more than five hundred dollars, at the discretion of the jury trying the same, and the signatures of the person or persons, so charged, to the note, bond, bill, draft, check, post note, or paper aforesaid, shall be taken and held to be proof of such signing, unless the fact of signing be denied on oath by the defendant.

Penalty.

Unlawful to pass any such paper.

§ 3. It shall be unlawful for any person or persons, within the limits of this state, to pass off, issue, emit, or put in circulation, any note, bill, bond, check, draft, or post note, of any incorporation, company, or unchartered banking association; and any person or persons, violating the provisions of this section, shall be deemed guilty of a misdemeanor, and shall be liable to be indicted, and, upon conviction, shall be fined for every such note, bill, bond, check, draft, post note, or other paper so issued, emitted, passed off, or put in circulation, not less than twenty, nor more than one hundred dollars, at the discretion of the jury trying said offence.

Penalty.

Carrying concealed weapons, unless there be cause to apprehend an attack, or person be travelling.

§ 4. Every one, who shall hereafter carry concealed about his person, a bowie knife, or knife or instrument of the like kind or description, by whatever name called, dirk or any other deadly weapon, pistol or any species of fire arms, or air gun, unless such person shall be threatened with, or have good cause to apprehend an attack, or be traveling, or setting out on a journey, shall, on conviction, be fined not less than fifty nor more than three hundred dollars: It shall devolve on the person setting up the excuse here allowed for carrying concealed weapons, to make it out by proof, to the satisfaction of the jury; but no excuse shall be sufficient to authorize the carrying of an air gun, bowie knife, or knife of the like kind or description.

Burthen of proof, as to excuse—but none sufficient as to air gun, bowie knife, &c.

Illegal voting at elections.

§ 5. If any person shall, at the same election, vote more than once for the same candidate for the same office, or for different candidates for the same office, either in the same or in different precincts, or vote, when he is not legally authorized so to do, he shall, upon conviction, be adjudged guilty of a misdemeanor, and fined in the sum of two hundred dollars, and be imprisoned in the county jail not exceeding one year.

How punished.

Apothecary selling poisonous drugs, without label.

§ 6. Every apothecary, druggist, or other person, who shall sell and deliver any arsenic, corrosive sublimate, prussic acid, or other substance, either solid or liquid, usually denominated poisonous,



without having the word 'poison,' written or printed on a label attached to the vial, box or parcel, in which the same is sold, or shall sell and deliver any tartar emetic, without having the true or common name thereof written or printed upon a label attached to the vial, box or parcel containing the same, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by a fine not exceeding one hundred dollars.

§ 7. Every apothecary, druggist, or other person, who shall give, sell or deliver, any of the drugs described in the preceding section, or any other drug or medicine, poisonous in its nature, to any slave, without an order in writing from the owner or manager of such slave, designating the drug or medicine, either by name, or the effect to be produced by it, he or she, so offending, shall, on conviction, be held guilty of a misdemeanor, and punished by a fine not exceeding two hundred dollars, and may also be imprisoned not exceeding three months.<sup>1</sup>

§ 8. Every person, who shall buy, sell or receive from any slave, any commodity of any kind or description, without the leave or consent of the master, owner, or overseer of such slave, verbally or in writing, expressing the articles permitted to be sold or bartered, first obtained, shall, on conviction, be fined in a sum not less than ten, nor more than one hundred dollars, and may be imprisoned not more than three months.

§ 9. Every sheriff, coroner, constable, clerk, or justice of the peace, who shall, within three days after demand made, fail or refuse to pay over any money received or collected by him in his official capacity, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum not less than one half, and not exceeding the entire amount received or collected: *Provided*, That the party, entitled to such money, shall remain in the county, or have an agent there, up to the expiration of three days after demand as aforesaid; and nothing, in this section contained, shall be construed to affect the private remedy of the party injured, either by motion or otherwise.

<sup>1</sup> The above and preceding section do not seem to repeal the act entitled "An Act to regulate the sale of poisonous drugs," approved Jan. 7th, 1835, so far as regards the necessity of a *written order* for the sale of drugs to *free persons of color, and children under twelve years of age*; nor do they provide a punishment in case death results from such unlawful sale. It is therefore appended:

"§ 1. *Be it enacted, &c.* That, from and after the passage of this act, it shall not be lawful for any apothecary, druggist, or other person, to sell or otherwise dispose of, to any slave or free person of color, or white child under the age of twelve years, any arsenic, or corrosive sublimate, without a written order from some reputable, known white person, authorizing such sale.

§ 2. Should any person violate the provisions of the above section, he or they shall be subject to be indicted in the circuit court of the county in which the offence may be committed, and, on conviction, shall be fined in a sum not exceeding five hundred dollars, to be assessed by the jury.

§ 3. If any person or persons shall violate the provisions of this act, so that death or other serious injury shall ensue thereby, such person or persons shall be liable to all the pains and penalties of the law, now provided against accessories before the fact, and be proceeded against accordingly."



## CHAPTER VIII.

*Of General Provisions.*

Sentence of death, how to be pronounced.

§ 1. Whenever any person shall be sentenced to the punishment of death, the court, before whom he was tried, shall direct that he be hanged by the neck till he is dead ; and such sentence shall be executed by the proper executive officer of the law, on such day as the court shall appoint, not less than four weeks and not more than eight weeks from the time of the sentence, unless the court, trying such convict, shall suspend the execution by a reference to the supreme court, of novel and difficult questions of law, arising in the case.

By whom to be executed.

§ 2. The sentences of courts, directing the execution of a person as aforesaid, shall be executed by the sheriff or by his regularly appointed deputy, unless there be no sheriff in the county, in which event, the coroner shall be authorized to do execution.

Where punishment shall be inflicted.

§ 3. The punishment of death shall be inflicted, either in the prison where the convict shall be confined, or within an inclosed yard of such prison, if there be one, or if the arrangement of the prison and its precincts be such as execution cannot there be done, then the punishment shall be inflicted as heretofore ; and it shall be the duty of the sheriff, or if there be no sheriff, the coroner, to give at least three days' previous notice, to the judge of the county court, the clerks of the circuit and county court, at least five justices of the peace, (if there be so many in the county,) and the physicians of the neighborhood, who may be present and witness the execution ; and the persons, thus attending the execution, shall make out and sign a certificate in writing, declaring that the convict was executed pursuant to his sentence ; and the officer doing execution shall permit the counsel of the convict, such ministers of the gospel as the convict shall desire, and his relations, to be present, and also, such officers of the prison, deputies and constables, military guard, or other assistants, as he shall see fit.

Duty of sheriff, to give notice to certain persons to be present at execution, &c.

Pregnant female under sentence of death—how sheriff shall proceed.

§ 4. If a female convict, sentenced to the punishment of death, shall be pregnant, it shall be the duty of the sheriff of the county, with the concurrence of the judge of the circuit court, or if he be absent, with the concurrence of any other circuit judge of the state, to summon a jury who are free from all interest, occasioned either by relationship or otherwise, which jury shall consist of the number of six, all of whom shall be physicians, if it be practicable ; and if it be not practicable to obtain so many physicians in the county, then the jury shall be made up by associating a number of intelligent persons to complete that number, and the sheriff shall give immediate notice thereof to the solicitor of the circuit, who shall attend and have power to issue subpœnas, and an inquisition shall be made and signed by the jurors and sheriff.

Being found pregnant, sentence to be suspended, and governor to order execution.

§ 5. If by such inquisition it shall appear that such female convict is with child, the sheriff shall suspend her sentence, and shall transmit the same to the governor.

§ 6. Whenever the governor shall be satisfied that such female convict is no longer with child, he shall issue his warrant, appointing a day for her execution, pursuant to her sentence.

When convict sentenced to death, is not executed.

§ 7. When for any reason any convict sentenced to the punishment of death, shall not have been executed pursuant to such sentence, and the same shall stand in full force, the circuit court of the



county, before whom such convict was tried, on the application of the solicitor of the circuit, shall direct the convict to be brought to the bar of the court, or, if necessary, shall issue a writ of *habeas corpus* for that purpose, or if he be at large, a warrant for his apprehension shall be issued by said court, or by any other judge or justice having authority to cause offenders against the criminal laws to be arrested, and, upon such convict being brought before the court, it shall proceed to inquire into the facts and circumstances, and if no legal reason exist against the execution of such sentence, the court shall re-sentence the convict to execution, on a day therein to be appointed; and if such offender shall be arrested under a warrant to be issued as aforesaid, the judge or justice issuing the same, if no good reason is shown for his discharge, shall commit such convict, that he be forthcoming to abide the order and sentence of the said circuit court.

§ 8. The term *felony*, when used in any statute, shall be construed to mean an offence, for which the offender, on conviction, shall be liable by law to be punished by death, or for which imprisonment in the penitentiary is made the appropriate punishment.

§ 9. When the term *person*, in this code, is used to designate the party whose property may be the subject of any offence, such term shall be construed to include the United States, this state, or any other state government or country, which may lawfully own any property within this state, and all public and private corporations, as well as individuals; and wherever the term *person* is used as designating the offender against criminal justice, the name shall be held to include all persons concerned, when there are more than one, and wherever the term *he*, *him* or *them* is used in reference to the commission of any offence, it shall be held to extend to females, unless its meaning be expressly limited, or, in the connexion in which they are used, such extended meaning cannot with propriety be given to them.

§ 10. Where any intent to injure, defraud, or cheat, is required by law to be shown, in order to constitute any offence, it shall be sufficient, if such intent be to injure, defraud or cheat the United States, this state, or any other state, or any public officer thereof, or any county, city or town, or any corporation, body politic, or private individual.

§ 11. Whenever, in the progress of a criminal trial, it shall be found, that there is such a material variance, between the allegations of the indictment and the proof adduced, as will, for that cause authorize the acquittal of the accused, and he shall not assent to the amendment of the indictment, so as to correspond with the proof, it shall be lawful for the solicitor, with the leave of the court, to enter a *nolle prosequi*, at any time before the jury shall retire, and prefer another indictment at the same or any subsequent term of the court, and the period of time, elapsing between the preferring of the first indictment and the second or other subsequent indictment, shall be deducted from any term limited for the prosecution of the offence for which the accused is indicted.

§ 12. Upon an indictment for any offence consisting of different degrees, as prescribed by law, the jury may find the accused not guilty of the offence in the degree charged in the indictment, and may find him guilty of any degree of such offence inferior to that charged in the indictment, or of an attempt to commit such an offence; and whenever a person is indicted for an offence embracing one or more offences of a lesser character, if the guilt of the accused

ed on the day appointed—mode of proceeding.

The term *felony* defined.

The term *person*, in this code, to include the U. States, this state, or any other, & all corporations, &c.

What sufficient evidence of intent to injure, defraud or cheat, to constitute offence.

When there is material variance between indictment and proof, and accused will not consent to amendment—*nolle prosequi* may be entered, &c.

On indictment for offence of different degrees, jury may convict of inferior degree.



is not made out as charged, it shall be competent for the jury, if the proof authorizes it, to find the accused guilty of the lesser offence, whether a felony or a misdemeanor.

Principal in 2d degree, or accessory to murder before the fact—how punished.

§ 13. Every person, who shall be a principal in the second degree in the commission of any felony, or who shall be accessory to a murder before the fact, shall, upon conviction, be punished in the same manner as is hereinbefore prescribed in respect to principals in the first degree.

Accessory after the fact, defined.

§ 14. Every person, who shall be convicted of having concealed any offender after the commission of any felony, or of having given such offender any other aid, knowing that he has committed a felony, with intent and in order that he may avoid or escape from arrest, trial and conviction, or punishment, and no other shall be deemed an accessory after the fact, and, upon conviction, shall be punished by fine not exceeding one thousand dollars, and may be imprisoned at the discretion of the court in the county jail, not exceeding six months: *Provided*, The person standing to the principal offender in the relation of parent, child, brother, sister, husband or wife, shall not be deemed accessories after the fact.<sup>1</sup>

How punished. But certain relatives not deemed accessories after the fact.

Accessories before the fact—where to be tried.

§ 15. Any person, charged as an accessory to any felony, before the fact, shall be indicted, tried, and punished in the same county, where the principal felon was or might be indicted and tried, although the offence of counseling or procuring a commission of such felony, may have been committed on the high seas, or on land, either within or without the limits of this state.

Accessories may be tried and convicted, if principal be dead, or has fled, though not convicted.

§ 16. Every person, who shall be an accessory to any felony, either by common law or by any statute, now or hereafter to be enacted, may be indicted, tried and convicted, if the principal felon be dead, or shall have fled from justice, and an allegation of either of these facts shall be equivalent to an allegation of a previous conviction.

On second conviction of penitentiary offence, offender to suffer increased punishment.

§ 17. If any person convicted of an offence punishable by imprisonment in the penitentiary, and either upon being pardoned or upon the expiration of the term of his sentence, shall subsequently be convicted of any offence committed after such pardon or discharge, he shall, upon each second or any subsequent conviction, be sentenced to imprisonment at least for the same period of time that he was sentenced upon his last conviction, and in addition thereto one fourth of the length of time of such sentence: *Provided*, That the offence, for which such second or subsequent conviction shall be had, shall have been committed after the first or previous conviction; and, in no case, shall the term of imprisonment exceed the longest period prescribed by law for the particular offence.

Proviso.

§ 17 to apply to offenders convicted in any of U. S. or territories, &c. of offence punished here by confinement in penitentiary.

§ 18. Every person, who shall have been convicted in any of the United States, or in any district or territory thereof, or in any foreign country, of an offence, which if committed in this state would be punishable by imprisonment in the penitentiary, shall, upon conviction for any subsequent offence committed within this state, be subject to the punishment prescribed in the last section upon second and other subsequent convictions, in the same manner and to the

<sup>1</sup> The 12th section of the act of 1807, "For the punishment of crimes and misdemeanors." (Aik. Dig. 102,) seems to remain in force, and is therefore annexed: "§ 12. If any person or persons shall be accessory before the fact, to any wilful murder, rape, arson, robbery, or burglary; he, she, or they so offending shall, upon conviction thereof, suffer death."



same extent, as if such first conviction had taken place in a court in this state.

§ 19. When any person shall be convicted of two or more offences before sentence shall have been pronounced upon him for either offence, the imprisonment, to which he shall be sentenced upon the second or other subsequent conviction, shall commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second term of imprisonment as the case may be.

On conviction of two or more offences before sentence, imprisonment, how adjudged.

§ 20. Whenever, by law, an offender is declared punishable, upon conviction, by imprisonment in the penitentiary for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, the court, authorized to pronounce judgment upon such conviction, may, in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years not less than such as are prescribed; and in all cases the court shall prescribe the term of imprisonment both in the penitentiary and county jail, unless it shall be expressly directed otherwise.

When the law does not limit the term of imprisonment, court may sentence for life, &c.

§ 21. Whenever the appropriate punishment for any offence shall be a fine only, or a fine and imprisonment, it shall be the duty of the jury to assess the fine, except in such cases as it may be otherwise specially provided.

Jury to assess fine, except, &c.

§ 22. In all cases punishable by fine only, or fine and imprisonment in the county jail, when the fine assessed, together with all costs, are not paid, it shall be the duty of the court to sentence the convict to the county jail for a term not less than ten days; and when the fine is as much as fifty and not exceeding one hundred dollars, the commitment shall be for the period of thirty days; when as much as an hundred and not exceeding two hundred dollars, the commitment shall be for sixty days; when over two hundred and less than five hundred dollars, the commitment shall be for three months; when five hundred dollars and more, it shall be six months; and, in all cases, the judgment of the court shall not only direct the imprisonment of the convict for a term certain, but shall also direct his confinement till the fine and costs are paid, or he shall be otherwise legally discharged: *Provided*, That in cases where a fine is the only punishment, or where the infliction of imprisonment is discretionary with the court, and the court may think that the payment of the fine assessed is an adequate punishment, if, in such cases, the convict shall, with one or more persons of undoubted responsibility, as his sureties, confess a judgment in favor of the state, for the amount of the fine and costs, the court shall not sentence him to imprisonment as directed by this section; but the payment of the fine, or the security therefor, given aforesaid, or imprisonment for its non-payment shall not prevent the court, where it is vested with power, from superadding a further term of imprisonment.

In cases punishable by fine only, or fine and imprisonment in county jail—when fine and costs are not paid, court to imprison at least ten days, &c.

Proviso.

§ 23. All misdemeanors the punishment of which is not provided for by this code, shall be punished as at common law, by fine and imprisonment in the county jail; the fine shall be assessed by the jury, and shall, in no case where the party injured has a private remedy for the recovery of damages, exceed two thousand dollars, unless the fine is to be paid to him to compensate for the injury sustained; the imprisonment may or may not be superadded, as the court trying the offender shall deem expedient, but its duration shall, in no case, exceed six months; and for convictions for misdemeanors expressly embraced by this code, where a fine only is made the

Misdemeanors, not provided for in this code, punished as at common law.

Fine assessed by jury not to exceed \$2000, unless &c. Imprisonment at discretion of court, not to



exceed six months.

When prisoner's life, or health will be endangered by remaining in jail, he may be removed by order of judge of circuit or county court. Duty of sheriff.

appropriate punishment, imprisonment shall be imposed only in the event of its non-payment, as provided in the preceding section.

§ 24. Whenever it shall be made satisfactorily to appear to any judge of the circuit court, or to the judge of the county court of the county, that the life of a prisoner confined in a county jail is endangered, or that his health will be seriously affected by remaining therein, such judge shall, by an order in writing, direct the sheriff or jailer to remove such prisoner to some suitable and safe place, as near as may be to the jail, and him there safely keep until his health be sufficiently restored to authorize his recommitment; to insure the safe keeping of such prisoner, the sheriff or jailer shall summon a sufficient guard to aid him day and night; and the guard, so summoned, shall be bound to attend under the penalty provided for disobedience in refusing to assist in conveying convicts to the penitentiary, and shall be entitled, for each day's service, to one dollar and twenty-five cents; and if the sheriff or jailer shall, negligently or voluntarily, suffer any prisoner to escape, during the time he shall be thus removed from the jail, he shall be guilty of an escape, in the same manner as if such prisoner shall have escaped from jail; and if such sheriff or jailer shall not recommit to the jail such prisoner, as soon as his health shall appear to have been sufficiently restored to render it prudent, he shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than fifty, and not exceeding five hundred dollars.

Alias writ of sci. fa. returned "not found" will authorize final judgment on forfeited recognizance. Proviso.

§ 25. Where an original and *alias* writ of *scire facias*, issued upon a judgment *nisi*, rendered at the instance of the state, upon a forfeited recognizance, shall be returned "not found," such return shall be equivalent to the personal service of the process, and authorize the court in which the judgment, *nisi*, was rendered to make the same absolute: *Provided*, That such writs shall have been returned by the proper officer of the county, in which the forfeited recognizance shall have been entered into or acknowledged.

Indictments under this code good, for offences at common law, if &c. Words "force and arms" &c. not necessary.

§ 26. All indictments for offences inhibited in this code, which are offences at common law, shall be good, if the offence be charged or described according to the common law; and the party charged, on conviction, shall receive the punishment prescribed by this act, nor shall the words "force and arms," or "contrary to the form of the statute," be regarded as necessary in any indictment whatever; but indictments, wanting these words, shall be deemed as effectual, to all intents and purposes, as indictments having the same words in them.

Convict, sentenced by any court of this state or U. S., holding office under this state—office there-by vacated.

§ 27. Whenever any convict, sentenced by any court of this state or of the United States, to be punished by imprisonment in the penitentiary, shall, at the time of conviction and sentence, hold any office under the constitution and laws of this state, such office shall be deemed to be vacated from the time of his sentence to imprisonment in the penitentiary; and if the judgment against such convict shall be reversed, he shall be restored to his office, with all its rights and emoluments; but, if pardoned, he shall not, by reason thereof, be restored to his office.

Convict cannot be ex'r, adm'r, or guardian.

§ 28. The effect of a sentence of imprisonment in the penitentiary shall be to put an end to the right of such convict to execute the office of an executor, administrator or guardian, in the same manner as if such convict had been removed from such office, to extinguish all private trusts not susceptible of delegation by such convict; when the sentence of imprisonment shall be for life, the convict shall be deemed civilly dead; but such convict may make and pub-

Convict becomes civilly dead by sentence of imprisonment



lish his last will and testament, at any time, within thirty days after his sentence; and if any married person be sentenced for a term of seven or more years, and, pursuant to such sentence, shall have remained in confinement for the space of two years, it shall be lawful cause of divorce.

for life—but may make will. Two year's confinement cause of divorce, when.

§ 29. Every person, sentenced to imprisonment in the penitentiary for the offence of bribery, forgery, robbery, burglary, arson, larceny, perjury, subornation of perjury, or conspiracy to cheat, shall be incompetent, forever after, to give testimony in any court of justice, or any tribunal relating to any matter or thing whatever, and shall also be disqualified from serving on juries; and no pardon, granted by the governor in any one of the cases stated in this section, shall have the effect to remove the disability imposed, unless such pardon shall so express upon its face.

Sentence to penitentiary for certain offences renders convict incompetent to give testimony, &c.

§ 30. Upon all convictions on indictments under the sections of this chapter, which inhibit the keeping or exhibiting of any gaming table or bank, or which makes it penal for the owner or occupant of any house to permit or suffer the same to be used for the keeping or exhibition of any gaming table or bank, the attorney-general, or solicitor, shall be entitled to a fee of one hundred dollars; upon convictions on indictments under any other provision of the law against gaming, the attorney-general, or solicitor, shall be entitled to a fee of forty dollars; and upon all convictions in which the punishment shall be imprisonment in the penitentiary, the attorney-general, or solicitor, shall be entitled to a fee of twenty dollars, and on all other convictions, to a fee of five dollars, to be taxed in the bill of costs, and paid by the party convicted.

Fees of attorney-general and solicitor on convictions for keeping &c. of gaming table; for gaming, what;

for penitentiary offences—what; on other convictions, what.

§ 31. After every conviction and sentence for any offence made punishable by imprisonment in the penitentiary, the clerk shall issue a *fiери facias*, on the judgment which shall be rendered in favor of the state, in usual form, for the collection of the costs of the prosecution, and for the collection of the value of the property assessed by the jury, in larceny and other cases authorized by law.

Clerk to issue execution for costs &c. on conviction for penitentiary offence.

§ 32. That sheriffs, coroners and constables may be vested with ample power to enable them to discharge the duties devolved upon them, they are hereby authorized, in cases not otherwise provided for by this code, to summon to their aid a sufficient number of the *posse* of their county, to enable them to execute all process, both civil or criminal, or to arrest all offenders against the law, in cases in which they are authorized to proceed without process, or to convey all persons in custody, from place to place, pursuant to law; and every person, summoned by either of such officers for the purposes aforesaid, who shall refuse obedience to the summons, shall, on conviction, be fined in a sum not less than fifty and not exceeding three hundred dollars; and it shall be the duty of the officer to present to the grand jury, at the next term of the circuit court of the county, the case of such offender, that the same may be examined according to law.

When sheriff, coroner, or constable may summon the *posse*.

Penalty for failing to serve, when summoned.

§ 33. Any person, summoned by a sheriff, coroner or constable, as in the last section provided, shall not be liable to an action for obeying such summons, by reason of any defect or irregularity in the authority of such officer, as he did nothing more than was allowed, had his authority been regular and sufficient.

Not liable to action for obeying summons.

§ 34. The persons, summoned as aforesaid if employed as long a time as one day, shall be allowed the same compensation as is allowed to guards who aid in conveying convicts to the penitentiary, and shall be paid from the same fund, unless their services were

Compensation of persons so summoned.

How paid in civil cases.



Proviso.

required in the execution of civil process, in which the charge for compensation shall be borne by the party chargeable with the costs of the cases: *Provided*, That it shall be competent for such party to move the circuit court of the county, next thereafter to be holden, to exempt him from the payment of the charge; notice of which motion shall be given to the officer and the plaintiff in the process; and if, after hearing proof adduced, the court shall be satisfied, that the officer had no just cause for summoning assistants, and was not so directed by the plaintiff, he shall be taxed with the charge for compensation; but if he acted under directions from the plaintiff or his attorney, then the plaintiff shall bear the burden, and, also, the costs of the motion; but if the party making the motion, fail to sustain the same, it shall be dismissed at his costs.

Indictment for perjury or subornation of perjury—what sufficient.

§ 35. In all prosecutions for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the offence, and by what court or before whom the false oath or affirmation was taken, averring such court or person to have competent authority to administer the same, without setting forth the commission or authority of such court or person; nor shall it be necessary to set out at length any bill, answer, indictment, information, declaration, record or proceeding, other than as aforesaid.

In prosecutions for libel truth of the matter may be given in evidence, &c.

§ 36. It shall be lawful for the defendant in any prosecution for a libel, to give in evidence, in his defence, the truth of the matter contained in the publication charged as a libel, and the jury shall be judge both of the law and the fact, under the direction of the court, as in other cases.

Prosecutions for penitentiary offences, except, &c. limited to 3 yrs.

§ 37. All offences, punished by confinement in the penitentiary, except murder in the second degree, manslaughter in the first degree, arson, forgery, counterfeiting, grand larceny, or the larceny of a slave, horse, ass or mule, perjury, and subornation of perjury, shall be prosecuted within three years next after the commission of such offence, and not after.

In perjury or subornation, 5 yrs.  
In misdemeanors, one.

§ 38. In perjury and subornation of perjury the offender shall be prosecuted within five years, and not after; the prosecution for all misdemeanors shall be commenced within one year after the commission of the offence, and not after.

Issuance of warrant commencement of prosecution.

§ 39. The issuance of a warrant shall be deemed the commencement of a prosecution, within the provisions of the preceding sections.

Bail, in capital cases, not matter of right, when def't is not tried at 1st term, for certain causes.

§ 40. No person, charged with the commission of an offence capitally punished, shall be admitted to bail as a matter of right, when he is not tried at the first term of the court, at which he was properly triable, if the failure to try his case proceeded from the non-attendance of the state's witnesses, where an affidavit is made, satisfactorily accounting for their absence; or where there is an entire failure to hold the court; or where the trial is delayed in consequence of the sickness of the judge, or some member of his family; or where there is a premature adjournment of the court, for either of the last mentioned, or other sufficient cause; or where, the judge, from any cause, is legally incompetent to try the accused; or where the term, allowed by law, is so short that the case of the accused, according to the accustomed course of proceeding, could not be tried; or where it was found impracticable to obtain a jury for his trial; or where the trial was not completed in consequence of the sickness of a juror, or there was a mis-trial for any cause; or where the delay proceeds from the fault or misfortune of the prisoner: but if the accused shall not be tried at the next stated term of the court, and

But if not



the failure to try his case shall not be occasioned by his fault or misfortune, or on his application, or with his assent, he shall be discharged on giving good and sufficient bail: *Provided*, That this section shall not be so construed, as to prevent a prisoner, committed for a capital offence, from being bailed at or before the first stated term of the court, if authorized by law.

§ 41. The governor of the state shall be, and is hereby authorized, (if in his opinion it may consist with the public welfare,) by and with the consent of the person condemned, to commute the punishment of death, by substituting therefor, imprisonment in the penitentiary for life or for twenty years, for all sentences of death, which may have been, or may be rendered for offences committed previous to the enactment of this code; and he may commute, in like manner, any ignominious punishment by substituting therefor imprisonment in the penitentiary for a term of years, not less than two; and such commutation of punishment shall be as effectual as if sentence of imprisonment in the penitentiary had been passed by a competent court; it shall, in such case, be the duty of the governor, to cause a statement of such commutation to be certified to the clerk of the court where the conviction was had, whose duty it shall be, to enter the same of record, at the next term of the court, under the direction of the presiding judge, and the convict, whose sentence is thus commuted, shall be conveyed to the penitentiary as if he had been originally sentenced therein.

§ 42. The preceding provisions of this code shall not extend to slaves, and if any slave shall commit any of the offences hereinbefore enumerated, he shall be tried and punished according to the law applicable to his case; but the preceding provisions shall embrace all offences committed by free negroes or other persons of color, except so far as they are excepted therefrom, either expressly or by enactment of a different law applying to them.

## CHAPTER IX.

### *Of Preliminary Proceedings in Criminal Cases.*

§ 1. It shall be the duty of the sheriff, coroner, and all constables within their respective counties, to arrest all persons who may commit in their presence any breach of the peace, or any one who may threaten to commit a breach of the peace, either by words or by acts, and the person arrested shall be taken before some convenient magistrate, together with all the testimony that can be produced against him, and such magistrate shall proceed to inquire into the circumstances, and shall dispose of the party arrested, as law and justice may require.

§ 2. Where a sheriff or coroner shall have strong ground to suspect that any person within his county has been guilty of a capital offence, within this state, it shall be his duty to arrest him, and take him forthwith before the judicial magistrate, within his county, who shall, thereupon, inquire into the evidence for and against the party suspected, and, upon such inquiry, shall so dispose of him as law and justice may require.

§ 3. All judicial officers in this state, and the mayor and alderman of cities, and the municipal officers of all incorporated towns, within their respective jurisdiction, shall have power to cause to be kept, all laws made for the preservation of the public peace, and in the

tried at 2d term, &c. he may be bailed. *Provido.*

Governor may commute punishment in certain cases.

Preceding provisions of this code not to apply to slaves, but to embrace free negroes, except, &c.

Sheriff, coroner, or constable to arrest for breaches of peace in his presence.

Sheriff or coroner to arrest for capital offence on strong grounds of suspicion.

Power of judicial officers &c., as conservators of the peace.



execution of that power, may require persons to give security to keep the peace, in the manner provided in this chapter.

When such officers shall issue peace warrants.

§ 4. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offence against the person or property of another, the magistrate shall examine the complaint, and any witness that may be produced, on oath, and cause such complaint to be reduced to writing, and subscribed by the party so examined; and if, upon such examination, it shall appear, that there is a just cause to fear the commission of any such offence, by the person complained of, it shall be the duty of the magistrate to issue a warrant, under his hand, with or without seal, reciting the substance of the complaint, and requiring the officer, to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate, or court, having jurisdiction of the matter.

When and how recognizance of the peace may be taken.

§ 5. When the party complained of is brought before the magistrate, he shall be heard in his defence, and may be required to enter into a recognizance, with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of this state, and, especially, towards the person requiring such security, for such term as the magistrate may direct, not exceeding twelve, and not less than six months; but the party complained of shall not be required to appear at the next term of the circuit court of the county, unless he is also charged for some other offence, for which he ought to be held to answer in such court.

When party fails to give security for peace, to be committed.

§ 6. If such recognizance shall be given, the party complained of shall be discharged, and if such person complained of shall refuse to find such security, it shall be the duty of the magistrate to commit him to prison, until he shall find the same, specifying in the warrant the cause of commitment, and the sum in which such security is required.

Sheriff may discharge, when security is given.

§ 7. Any person, committed for not finding sureties for the peace as above provided, may be discharged by the sheriff of the county in which he is detained, upon giving such security as was originally required of him.

Such recognizance to be returned to circuit court.

§ 8. Every recognizance, taken in pursuance of the foregoing provisions, shall be transmitted by the magistrate or officer taking the same, to the next circuit court of the county.

When accused may be discharged, & complainant pay costs

§ 9. If, upon examination, it shall appear, that there is no just cause to fear that any such offence will be committed by the party complained of, he shall forthwith be discharged; and if the magistrate shall deem the complaint unfounded or frivolous, he may order the complainant to pay the costs of the prosecution, who shall, thereupon, be answerable to the magistrate, and the officer executing the warrant for their fees, and an execution may issue to coerce payment.

Person bound to the peace may also be required to pay costs.

§ 10. In all cases, where a person is required to give security for the peace, or for his good behavior, the court or magistrate may further order, that the costs of the prosecution, or any part thereof, shall be paid by such person, for which purpose an execution may issue for the collection of the same.

Person bound to the peace may appeal to circuit court, giving bond, &c.

§ 11. Any person, supposing himself aggrieved by the order of any judge of the county court, or any justice of the peace, mayor, or alderman of a city, or municipal officer of an incorporated town, requiring him to be recognized as aforesaid, may, on entering into bond and security, in a penalty equal to that required to enforce an observance of the peace, for the prosecution of his appeal to effect, and,



in the mean time, to keep the peace, be entitled to an appeal to the circuit court of the county, next thereafter to be holden; and the magistrate, from whose order an appeal is thus taken, may require such witnesses, as he may think necessary, to be recognized, for their appearance at the court to which the appeal is made.

§ 12. The court, before which such appeal is prosecuted, may, upon examination, confirm the order of the justice, or discharge the appellant, or may require him to enter into a new recognizance, with sufficient sureties, conditioned in such sum, and for such time as the court shall think proper; he may also make such order, in relation to the costs of the prosecution, as he may deem just and reasonable.

Circuit court may affirm justice's order or discharge, &c.

§ 13. If any party appealing shall fail to support his appeal, his recognizance shall remain in full force and effect, as to any breach of the condition, and shall also stand as security for any costs, which shall be ordered by the court appealed to, to be paid by the appellant, and the examination, on such appeal, shall be *de novo*.

Party failing in appeal, recognizance to remain in full force &c

§ 14. Every person, who shall, in the presence of any magistrate, or before any court of record, make any affray, or threaten to kill, or beat another, or to commit any violence, or outrage upon his person or property, in a manner tending to the disturbance of the peace, may be ordered, without process, to be recognized with sureties, to keep the peace, for a term not exceeding six months, and, in case of refusal, to be committed as before directed.

On breach of the peace before court or magistrate, or uttering threats, offender may be bound over.

§ 15. Whenever, on a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited by the circuit court, the court may remit such portion of the penalty as the circumstances of the case shall render just and reasonable.

When recognizance is adjudged forfeited, court may remit, &c.

§ 16. For the apprehension of persons charged with criminal offences, the judges of the supreme court, chancellors, judges of the circuit and county courts, justices of the peace, mayor and aldermen of cities, and municipal officers of incorporated towns, within their respective jurisdictions, are authorized to issue process, under the rules and regulations hereinafter prescribed: upon complaint being made to any such magistrate that a criminal offence has been committed, it shall be the duty of such magistrate to examine, on oath, the complainant, and any witnesses who may be produced by him, and shall cause the same to be subscribed by the parties examined; and, if it shall appear that any such offence has been committed, the magistrate shall issue a warrant, reciting the substance of the accusation, requiring the officer to whom it is directed, forthwith to take the person accused, and to bring him before the said magistrate, or some other magistrate of the county, to be dealt with according to law; and, in the same warrant, may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on examination.

What officers may issue process against criminal offenders, and on what complaint.

§ 17. Warrants, issued by a judge of the supreme court, chancellor, judge of the circuit or county court, or justice of the peace, may be executed in any part of this state, when the offender escapes from or out of the county, or from the sheriff or other officer, to whom such warrant was directed.<sup>1</sup>

Where warrants, issued as above, may be executed, when defendant flees.

<sup>1</sup> The provisions of the 23d section of the act of Dec. 27th, 1814, entitled "An Act to revise, consolidate, and amend the several acts relative to justices of the peace and constables," (Aik. Dig. 117,) do not appear to be fully embraced in the above section:

"§ 23. When any person, charged with any criminal offence, removes or escapes from the county where such offence is alleged to be committed, into another coun-



How sheriff  
may get aid  
to arrest fu-  
gitive in any  
county.

§ 18. When the sheriff, or other officer, pursues the offender out of his county, if he requires aid, in order to arrest the fugitive, he shall procure some one of the magistrates, having jurisdiction in the county to which the fugitive has escaped, to endorse the warrant, and upon such endorsement being made, may summon persons to assist him, and exercise the same authority as in his own county.

Justice not  
liable for en-  
dorsing such  
warrant,  
though ille-  
gal.

In offences  
not capital,  
nor peniten-  
tiary, party  
pursued and  
arrested,  
may give re-  
cognizance  
before a jus-  
tice of any  
county.

§ 19. No magistrate shall be liable to an indictment, action of trespass, or other action, for having endorsed any warrant, pursuant to the provisions of the last section, although it shall afterwards appear that such warrant was illegally or improperly issued; in all cases, where the offences mentioned in the warrant, are not punishable by death or in the penitentiary, if the person arrested shall request that he may be brought before a magistrate of the county in which the arrest was made, for the purpose of entering into a recognizance, without a trial or examination, the officer, who made the arrest, shall convey him before a magistrate of such county, who may take from the person arrested a recognizance, with sufficient securities, for his appearance at the court having cognizance of the offence, next thereafter to be holden, and the party arrested shall be thereupon discharged; but when the recognizance is taken in a county, other than that in which the warrant issued, the magistrate taking it, in prescribing the penalty, shall act upon the presumption that the offence is of an aggravated character.

How such  
recognizance  
shall be cer-  
tified and re-  
turned.

§ 20. The magistrate, who shall so admit the person so arrested to bail, shall certify the fact upon the warrant, and shall deliver the same, with the recognizance by him taken, to the person who made the arrest, who shall cause the same to be delivered, without unnecessary delay, to the clerk of the court to which the accused was recognized to appear.

If such re-  
cognizance  
be not given,  
party to be  
taken before  
magistrate  
issuing war-  
rant.

§ 21. If the magistrate in the county, where the arrest was made, shall refuse to admit to bail the person so arrested and brought before him, or if no sufficient bail shall be offered, the person having him in charge shall take him before the magistrate who issued the warrant, or, in his absence, before some other magistrate of the county in which the warrant was issued, to be proceeded with as hereafter directed.

When ac-  
cused is  
brought be-  
fore said  
magistrate.

§ 22. Every person, arrested by warrant for any offence where no provision is made for his examination therein, shall be brought before the magistrate who issued the warrant, or, if he be absent, or unable to attend, before some other magistrate of the same county, and the warrant, with a proper return thereon, signed by the person who made the arrest, shall be delivered to the magistrate.

Examina-  
tion may be  
adjourned,

§ 23. Any magistrate may adjourn the examination, or trial, pending before himself, from time to time, as occasion shall require, not

ty, it shall be the duty of any justice of the county, to which such person may have removed or escaped, on proof of the hand-writing of any justice of the county where the offence was committed, to endorse any warrant issued by him, which shall be sufficient authority for arresting such offender, in any place within the jurisdiction of such justice, and such criminal shall be conveyed for examination, to some justice of the quorum, or of the peace, within the county where the offence is charged to have been committed: and subpoenas for witnesses may issue to any county on the part of the territory, where it is necessary for bringing an offender to justice, which shall be executed by some officer authorized to execute process in said county, where such witness may reside; and any justice of the county, to which any offender may have removed or escaped, on the oath of any credible person, may arrest and have conveyed to the proper county for examination, any person charged with felony or other crime.



exceeding ten days at any one time, without the consent of the defendant, or person charged, and to the same or a different place in the county, as he shall think necessary, and in such case, if the party is charged with a capital offence, he shall be committed in the mean time; if the offence be of a less grade, he may be recognized in a sum, with sureties, to the satisfaction of the magistrate, for his appearance for such further examination, and for want of such recognizance, he shall be committed to prison; and on the day appointed for continuing the examination, he may be brought before the magistrate, by his verbal order to the same officer, who had charge of him, or by an order in writing to a different person, if the custody has been changed.

§ 24. If the person, so recognized, shall not appear before the magistrate at the time appointed for his further examination, according to the condition of such recognizance, the magistrate shall record the default, and shall certify the recognizance, with the record of such default, to the circuit court of his county, next to be holden, and the like proceeding shall be had thereon, as upon the breach of the condition of the recognizance before that court.

§ 25. The magistrate, before whom any person is brought, on a charge of having committed an offence, shall, as soon as may be, examine the complainant, and the witnesses to support the prosecution, on oath, in the presence of the party charged, in relation to any matters connected with such charge, which shall be deemed pertinent.

§ 26. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination; and also, in the cross examination of the witnesses, in support of the prosecution: the magistrate, while examining any witnesses, may, at his discretion, and shall, upon the application of the prosecutor, or the accused, exclude from the place of examination all the other witnesses, whether for or against the prisoner; he may, also, if requested, or if he see cause, direct the witnesses, both for the prosecution and the defence, to be kept separate, so that they cannot converse with each other, until they shall have been examined.

§ 27. The testimony of the witnesses examined, shall be reduced to writing by the magistrate or under his direction, and shall be signed by the witnesses, if required by the magistrate; and if it shall appear to him, upon the whole examination, that no offence has been committed, or if there is not probable cause to believe the accused guilty, and if the offence be bailable by the magistrate, and the prisoner offers sufficient bail, it shall be taken, and he shall be discharged; but if no sufficient bail be offered, or the offence be not bailable by the magistrate, the prisoner shall be committed to prison for trial.

§ 28. When the accused is admitted to bail, or committed, the magistrate shall also bind, by recognizance, such witnesses against the prisoner, as he shall deem material, or as the prosecutor may desire, to appear and testify at the court to which the accused shall be held to answer.

§ 29. It shall be the duty of the magistrate, if requested by the accused, to bind, by recognizance, his witnesses to appear, in the same manner as he is required to recognize the witnesses for the state.

§ 30. Whenever a magistrate shall be satisfied, by due proof, that there is good cause to believe that any witness, recognized on the

not exceeding ten days, without defendant's consent—meanwhile, accused may be committed, or bailed.

Recognizance forfeited to be returned to circuit court.

Such examination, how conducted.

Prisoner may have witnesses and counsel.

Witnesses separated on application of prosecutor or defendant.

Testimony to be reduced to writing.

When def't may be bailed, or discharged.

When committed.

Magistrate to recognize witnesses for the state.

Also, for the accused.

Witnesses for the state



may be required to give sureties to recognize.

part of the state, will not perform the condition of his recognizance, unless other security be given, such magistrate may order the witness to enter into a recognizance, with such sureties as may be necessary for his appearance at court.

Any other person may give recognizance for married woman or infant.

§ 31. Whenever any married woman or infant is a material witness, any other person may be allowed to recognize for their appearance, and the magistrate may, in his discretion, require such married woman or infant to procure recognizers, for their appearance at court.

Witnesses, failing to recognize, or give security, committed.

§ 32. All witnesses required to recognize, either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain, until they comply with such order, or be otherwise discharged according to law: *Provided, however,* That it shall not be competent to require sureties of any witness, who does not reside within the state, and within fifty miles of the place where the examination is made.

Proviso.

Examinations & recognizances in criminal cases, when returned.

§ 33. All examinations and recognizances, touching criminal offences, shall be certified by the magistrate taking the same, to the court at which the witnesses are bound to appear, on or before the first day of the sitting thereof, and if such magistrate shall refuse or neglect to return the same, he may be compelled, forthwith, by rule of court, and in case of disobedience, may be proceeded against by attachment, as in cases of contempt.

Magistrate may associate with him one or more magistrates.

§ 34. Any magistrate, to whom complaint is made, or before whom any prisoner is brought, may associate with himself one or more magistrates of equal grade, and the powers and duties, herein above prescribed, may be executed by such magistrates so associated.

Sureties in a recognizance may surrender their principal.

§ 35. Any surety, in a recognizance to keep the peace, or to appear at court and answer a charge of a criminal offence, shall have the same authority and right to surrender his principal, as if he had been bail in a civil case, and, upon such surrender, shall be discharged and exempt from all liability, for any act of the principal subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person, so surrendered, may be recognized anew, with sufficient sureties, by the sheriff, or any justice of the peace, for the residue of the term for which he was required to keep the peace, or to appear at court, according to the terms of the original recognizance, and, thereupon, shall be discharged.

## CHAPTER X.

### *Of Grand and Petit Jurors.*

Sheriff to obtain list of householders & freeholders of his county biennially.

§ 1. It shall be the duty of the sheriffs of the several counties of this state, to obtain, biennially, a list of the householders and freeholders within the same; and the sheriff, judge of the county court, and clerks of the circuit and county courts, shall, on the first Monday of May next, or within thirty days therefrom, and biennially thereafter, meet at the office of the clerk of the circuit court, and select from the list aforesaid, the names of such persons as may be adjudged competent to discharge the duties of grand and petit jurors, with honesty, impartiality and intelligence.

Grand and petit jurors to be selected.

Majority may select jurors.

§ 2. A majority of the officers, named in the preceding section, shall proceed to discharge the duties therein required, if all should



not attend at the time and place appointed; and the duties required of them shall be considered official, and their respective oaths of office shall be regarded as a pledge for its faithful performance. Duties official.

§ 3. In making the selection as aforesaid, the officers, named in the first section, shall select such persons only as they know, or have good reason to believe, are possessed of the qualifications aforesaid, and are esteemed in the community for their integrity, fair character and sound judgment. What persons may be selected.

§ 4. No person under the age of twenty-one years, or above the age of sixty, nor any person continually sick, or who may be diseased at the time of the summons, nor any habitual drunkard, shall be summoned on the jury. Persons exempt, on account of age, disease, &c.

§ 5. The professors and students of universities and colleges, attorneys and counselors at law during the time they practice their profession, judges of the several courts, ministers of the gospel having charge of churches, practicing physicians, teachers and students of academies and common schools, keepers of public mills, commissioners of revenue and roads, members of incorporated fire companies, officers of the United States, secretary of state, and officers of the executive department of the government, clerks of courts and coroners, the president, directors and other officers of incorporated banks, and keepers of ferries, toll-bridges and toll-gate keepers, shall be exempt, by law, from serving either as grand or petit jurors; and all the aforesaid persons shall be excluded from serving on juries, unless by the consent of both parties. Who exempt on account of official stations, or avocation.

§ 6. The selection of householders and freeholders, made as aforesaid, shall be drawn off in a fair hand, and the list shall contain the christian and surnames, at length, of the persons named therein, their respective places of residence, and their several occupations (if known) and the list shall be filed in the office of the clerk of the county court, within ten days after the selection as aforesaid. List of householders and freeholders—how made, and where filed.

§ 7. On receiving such list, the clerk of the county court shall write the names of the persons contained therein, with their respective places of residence, and their several occupations, (if shewn by the list aforesaid) on separate pieces of paper, and shall roll up or fold such pieces of paper in the same manner, as nearly as may be, so that the name written thereon shall not be visible, and shall deposit such pieces of paper in a sufficient box, from which they shall be drawn as hereinafter provided. Names to be written on separate pieces of paper, folded, and deposited in a box.

§ 8. At least thirty days previous to the sitting of any term of the circuit court in the several counties, it shall be the duty of the clerk of the county court, in the presence and with the assistance of the sheriff, judge of the county court, and the clerk of the circuit court, to draw the names of fifteen persons, from the box, in which the pieces of paper shall have been deposited as aforesaid, to serve as grand jurors at such circuit court. When & by whom grand jurors to be drawn.

§ 9. The drawing of grand and petit jurors shall be conducted as follows: Number. [a 1843—(41) Sec. 1.]

*First*—He shall shake the box containing the names of the jurors, so as to mix the slips of paper on which the names are written, as much as possible: How grand and petit jurors shall be drawn.

*Second*—He shall then publicly draw out of the said box as many of the slips of paper containing such names, as there shall be jurors required by law, or specially ordered for such court:

*Third*—A minute of the drawing shall be kept by one of the attending officers, in which shall be entered the name contained on every slip of paper so drawn, before any other slip shall be drawn:



*Fourth*—If, after drawing the whole number required, the name of any person shall appear to be drawn, who is dead, or become insane, or who has permanently removed from the county, or is otherwise disqualified, an entry of such fact shall be made in the minute of the drawing, and the slip of paper containing the name of such person shall be destroyed :

*Fifth*—Another name shall be drawn in place of that destroyed, which shall be, in like manner, entered on the minutes of the drawing :

*Sixth*—The same proceedings shall be had as often as may be necessary, until the whole number shall be drawn :

*Seventh*—The minute of the drawing shall then be signed by the clerk and the attending officers, to be filed in the office of the clerk of the county court :

*Eighth*—A list of the names of the persons so drawn, with their places of residence, shall be made out and certified by the attending officers, and the clerk of the county court, who shall deliver the same to the clerk of the circuit court.

When and how clerk of circuit court shall issue *venire facias* To whom directed.

§ 10. Upon the receipt of such list, it shall be the duty of the clerk of the circuit court, forthwith to issue a writ of *venire facias*, in the body of which he shall recite, at length, the names, places of residence and occupations, of the several persons named therein: Such *venire facias* shall be addressed to the sheriff of the county, if any there be, (if none, then to the coroner,) requiring him to summon the persons whose names are therein mentioned, to appear and serve on the grand jury, for the term of the circuit court next thereafter to be holden.

Jurors, when and how summoned—and *venire facias* returned.

§ 11. The officer, to whom such writ of *venire facias* shall be addressed, shall summon the persons therein named, at least three days previous to the sitting of the court, at which their attendance is required, by giving personal notice to each person, or by leaving a written notice at his place of residence, with some person of proper age ; and such officer shall return the writ of *venire facias* to the court, at the opening thereof, specifying those who were summoned.

Penalty for grand jurors failing to attend.

§ 12. The court, to which any such writ shall be returned, shall impose a fine of not less than fifty and not exceeding one hundred dollars, upon any person, duly summoned as a grand juror, who shall, without reasonable cause, neglect to attend, and shall enter a judgment for the fine so imposed, conditioned that the state shall recover the same for the use of the county, unless such defaulting grand juror shall, upon *scire facias* to be made known, appear at the next term of the circuit court, and shew good cause for his non-attendance ; and it shall be the duty of the clerk, after the rising of the court, to issue a *scire facias* upon each judgment rendered against defaulting jurors : *Provided*, That, if the juror summoned shall render a sufficient excuse to a court trying the same, he shall be exempt from all cost, when the fine is remitted.

Clerk to issue *scire facias*. Proviso.

When court may discharge a grand juror.

§ 14. The court may discharge a person from serving as a grand juror, who does not possess the requisite qualifications, or who is exempt or disqualified for such service, or for any reasonable and proper cause, to be judged of by the court.

Names of persons excused, or not attending, to be returned to box of undrawn ballots.

§ 14. When any person, drawn as a grand juror, shall not attend the court for which he was drawn, or shall be excused for the term, his name shall be returned to the box of undrawn ballots, and the clerk of the circuit court shall furnish the clerk of the county court with a list of the names of all persons thus excused or not attending ;



but when any person, drawn as a grand juror, shall be discharged by the court, or excused from attending, on account of any disqualification, or for any other cause, not being of a temporary nature, the ballot, containing the name, shall be destroyed.

§ 15. There shall not be less than thirteen<sup>a</sup> persons sworn on any grand jury; from the persons summoned to serve as grand jurors, and appearing, the court shall appoint a foreman, and they shall also appoint a foreman in every case, where any person, already appointed, shall be discharged or excused, before the grand jury are dismissed.

[a1843—(41)  
Sec. 1.]  
Number to be sworn on grand jury.  
Foreman to be appointed.

§ 16. If, at any circuit court, there shall not appear at least thirteen persons duly qualified to serve as grand jurors, who shall have been summoned for that purpose, or if the number of grand jurors attending shall be reduced below thirteen, by any of them being discharged or otherwise, such court may, by an order to be entered on its minutes, direct the sheriff to summon twice the number of persons necessary to complete the grand jury, from the citizens of the county qualified to serve.

Number of grand jurors being less than thirteen how supplied.

§ 17. The sheriff shall summon such jurors, accordingly, who shall be bound forthwith to attend, and serve (if drawn), unless excused by the court in the same manner, and subject to the same penalties for neglect, as herein before provided, in the case of persons duly drawn and summoned.

Persons summoned to attend forthwith.

§ 18. If a larger number of grand jurors attend, than the court shall require to compose the grand jury, the names of the grand jurors shall be written on slips of paper, folded or rolled up in ballots, as near alike as may be, and placed in a box or something substituted therefor; from these ballots, the sheriff, under the direction of the court, shall draw a sufficient number of names to complete the grand jury.

How to proceed when number of grand jurors is larger than necessary.

§ 19. The following oath or affirmation shall be administered to the foreman of the grand jury: "You, as foreman of the grand jury for the body of the county of \_\_\_\_\_ do solemnly swear, or affirm, (as the case may be) that you will diligently inquire and true presentment make, of all such matters and things, as shall be given you in charge, or otherwise come to your knowledge; the state's counsel, your fellows', and your own, you shall keep secret; you shall present no person for envy, hatred, or malice; neither shall you leave any person unpresented, for love, fear, favor, affection, reward or the hope thereof; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding." Each of the other jurors shall then be called, and the following oath or affirmation administered to them, viz: "The same oath or affirmation, which your foreman has taken on his part, you and each of you, on your behalf, respectively, shall well and truly observe and keep."

Oath of foreman of grand jury.

Oath of other grand jurors.

§ 20. The foreman of every grand jury, while the grand jury are in session, the attorney-general, solicitor, or other prosecuting officer, who shall be before them, shall have authority to administer all oaths and affirmations, in the manner prescribed by law, to witnesses, who shall appear before such jury, for the purpose of testifying in any matter of which they may have cognizance; and the foreman shall return to the court a list, under his hand, of all the witnesses, who may have been sworn before the grand jury during the term, and the same shall be filed of record by the clerk.

Foreman, attorney-general and solicitor may swear witnesses.

Foreman to return a list of witnesses to court.



Attorney-general, or solicitor may issue subpoenas, &c.

§ 21. The attorney-general, solicitor, or other prosecuting officer, is authorized to issue subpoenas, for the purpose of compelling the attendance of witnesses, to give evidence before the grand jury; and witnesses, summoned under such subpoenas, shall be subject to the same penalties (to be inflicted by the circuit court) for disobedience, as if they had been issued by the clerk of the court.

To attend grand jury, examine witnesses, &c.

§ 22. It shall be the duty of the attorney-general, solicitor, or other prosecuting officer, whenever required by the grand jury, to attend them, for the purpose of examining witnesses in their presence, or of giving them advice about any legal matter, and to issue subpoenas to bring witnesses before them.

May, at all times, appear before grand jury, at its request.

§ 23. The attorney-general, solicitor, or other prosecuting officer, shall be allowed, at all times, to appear before the grand jury, on its request, for the purpose of giving information relative to any matter cognizable by them, and may be permitted to interrogate witnesses before them, when the grand jury shall deem it necessary; but neither the attorney-general, solicitor, or other prosecuting officer, constable, or any other person, except the grand jurors, shall be permitted to be present, during the expression of their opinions, or the giving of their votes upon any matter before them.

But grand jury to be alone, when.

If offence be committed after discharge of grand jury, another may be summoned during sitting of court.

§ 24. If any offence shall be committed during the sitting of any circuit court, after the grand jury, attending such court, shall have been discharged, such court may, in its discretion, by an order, to be entered on its minutes, direct the sheriff to summon not less than thirteen, and not exceeding twenty-three citizens of the county, possessing the requisite qualifications of grand-jurors, and the sheriff shall, accordingly, forthwith summon of the inhabitants of the county, qualified as aforesaid, the number designated, who shall be returned and sworn, and shall proceed in the same manner, in all respects, provided by law for other grand jurors.<sup>1</sup>

Grand jury may send witnesses examined before them in to court to be recognized.

§ 25. Whenever the grand jury deem it necessary, they shall be authorized to require any witness, giving evidence before them, on leaving the jury-room, to go into court, forthwith, and recognize for his appearance from day to day, during the term, to give evidence touching the case in which he has testified before them, and in order to insure such recognizance from such witness, it shall be the duty of the constable, attending the grand jury, to conduct him before the court.

Judge may order 48 jurors to be drawn and summoned for any extra term of court

§ 26. Previous to any extra or special term of the circuit court, to be holden in any county in this state, it shall be lawful for the presiding judge, if he deem it necessary, to order the sheriff, judge of the county court, clerk of the circuit or county court, forthwith to draw forth-eight persons, inhabitants of the county, duly qualified by law to serve on juries, and the person so drawn shall be summoned, as before provided; and from the number of those in attendance there shall be drawn, not less than thirteen and not more than twenty-three, who shall be impanneled and sworn as grand jurors, at such special or extra term, and shall have the same power, and be governed by the same laws, as other grand juries are, and the residue

<sup>1</sup> The following, being the first section of the act of 1826—(21) seems to be repealed:

"The grand jury, impanneled for any county, shall not be detained more than four days, unless cause be shown to the court for such detention."



of the persons attending shall be placed on the petit jury for the term.

§ 27. At the time of drawing the names of grand jurors to attend upon any regular term of the circuit court as aforesaid, the clerk of the county court, in the presence of, and with the assistance of, the officers who shall have attended for the purpose of drawing the grand jury for such court, shall proceed and draw the names of twenty-four<sup>a</sup> persons, from the box containing the names from which the grand jurors were drawn, to serve as petit jurors at such court, which jurors shall not be required to serve but one week; and if the court may, by law, sit more than one week, twenty-four jurors may be drawn and summoned for each succeeding week which such court may sit; but if the service of such additional jurors should not be required by the adjournment of the court, ballots containing their names shall be returned to the box whence they were drawn.<sup>1</sup>

Petit jurors drawn.

[a 1843—(41)  
Sec. 2.]

Number to be drawn for each week of term.

§ 28. Such drawing shall be conducted, in all respects, in the manner prescribed by law for drawing grand jurors; a minute of such drawing shall be kept, signed and filed in like manner, and a list of the persons so drawn, with their places of residence and respective occupations, shall be made out and certified by the clerk of the county court and the attending officer, as far as these may be ascertained by the ballots drawn from the box containing their names, and such list shall be delivered to the clerk of the circuit court, who shall issue a writ of *venire facias*, requiring the persons therein named, to be summoned as directed in the case of grand jurors.

To be drawn as grand jurors, &c.

*Venire facias.*

§ 29. The sheriff shall summon the persons named in such list, to attend the court as jurors, at least three days previous to the sitting of the same, and shall return such list to the court at the opening thereof, specifying those who were summoned; and the clerk of the circuit court shall furnish the clerk of the county court with a list of the names of such jurors as may fail to attend or be excused by the court, who shall deposit their names in the box as in the case of grand jurors.

When to be summoned.

§ 30. If any person, duly drawn and summoned to attend as a juror as aforesaid, shall neglect to attend without a sufficient excuse, he shall be fined in the sum of fifty dollars, for which the like judgment shall be rendered, and the like proceedings had, as is provided in the case of defaulting grand jurors.

Penalty for failing to attend.

§ 31. On the day when the jurors are summoned to attend at any circuit court, the clerk shall prepare, by lot, a list of their names, and the first twelve in the list, who are not excused, shall be sworn and impaneled as a jury for the trial of causes, and shall be called the first jury; the next twelve on the same list shall then be sworn and impaneled in like manner, and shall be called the second jury; and if there are any supernumerary grand or petit jurors, they may be placed upon a third jury, if it be necessary for the despatch of business, or they may be put on either of the juries, as occasion shall require, in the place of any who are absent or may be challenged: *Provided*, That nothing, herein contained, shall prevent the transferring of jurors from one jury to another, when the convenience of the court or of the jurors, or the course of business may require.

Panels of petit jurors, how made & numbered.

*Proviso.*

<sup>1</sup> Thirty-six persons are still required to be summoned in Greene, Sumter, Montgomery, Marengo, Perry, Dallas, Dale, and Coffee counties.—See Acts of 1842—3, p. 44.



*Talesmen,*  
when summoned.

§ 32. When, by reason of challenges, or otherwise, a sufficient number of jurors, duly drawn and summoned, cannot be obtained for the trial of any cause, civil or criminal, or for the execution of a writ of inquiry, the court shall cause jurors to be summoned from the by-standers, or from the county at large, to complete the pannel.

All the regular jurors being engaged, one or more jurors may be summoned, as necessary.

§ 33. Whenever it shall happen, that all the regular jurors attending upon the court, shall be engaged out of court, in the trial of issues of fact, or in the execution of writs of inquiry, the court, to prevent a suspension of business, may order the sheriff to summon, from time to time, a sufficient number of jurors to complete one or more juries, as occasion may require; and jurors so summoned, sworn and empaneled by the court, shall possess and exercise the duties of jurors summoned as herein before directed.

Penalty for neglecting to draw and summon jurors to circuit court.

§ 34. When, by a neglect of any of the duties required to be performed by any of the officers or persons herein before mentioned, the grand or petit jurors, to be returned to any circuit court, shall not be duly drawn and summoned to attend the court, every person guilty of such neglect, without any just cause therefor, shall pay a fine not exceeding five hundred dollars, to be imposed by such court, and the judgment therefor shall be conditional, as in the case of a defaulting grand juror, and the same proceedings shall be thereupon had, before it shall be made absolute.

Qualifications of grand and petit jurors.

§ 35. All persons, summoned under the provisions of this chapter, whether as grand or petit jurors, shall possess the qualifications required in the first and third sections of this act, and be free from the objections contained in the fourth and fifth sections of the same.

Foregoing provisions, as to drawing and summoning grand and petit jurors merely directory. If no grand, or petit jurors, be summoned, court may order them to be summoned &c.

§ 36. The foregoing provisions, so far as they prescribe a time for the drawing and summoning of grand and petit jurors, shall be construed as merely directory, and such juries, drawn and summoned, whether at an earlier or later day, shall be deemed legal and possess the power and perform the duties pertaining to grand and petit juries; and if, in consequence of the neglect of the clerk of the county court, and the officers who are required to co-operate with him, or a majority of them, no grand or petit jury shall be returned, to serve at any term of the circuit court, such court shall be vested with power and authority to issue an order to the sheriff, to summon fifteen householders and freeholders, in every respect qualified to discharge the duties of grand jurors; and an order shall also be directed to the sheriff, requiring him forthwith to summon twenty-four householders and freeholders, with like qualifications to serve on the petit jury; and if the term of the court shall be of more than one week's continuance, an order similar to the last shall be issued to the sheriff from time to time, requiring him to summon twenty-four jurors for each succeeding week of the term.

Ballots of jurors so drawn, how disposed of, &c.

§ 37. The ballots, to be drawn from the box containing the names of the householders and freeholders, as aforesaid, shall be placed in another box, and the persons, whose names are therein written, shall not be required to serve as grand or petit jurors, until all the names, contained in the first box, shall have been drawn out, or until, from the householders and freeholders of the county, a list of names, qualified to serve on juries, shall have been selected anew; but the ballots of drawn names shall not be placed in such other box, until after the adjournment of the circuit court, when it shall be the duty of the clerk of the county court, to ascertain from the clerk of the circuit court, which of the persons drawn were excused, for a cause of a temporary nature, or who failed to attend, or whose services



were dispensed with, by reason of the previous adjournment of the court, that he may dispose of the ballots, as by this chapter directed.

§ 38. In civil cases the court shall, on motion of either party, examine, on oath, any person who is called as a juror therein, to know whether he is related to either party or has any interest in the cause, or has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any competent evidence in support of the objection; and if it shall appear to the court, that the juror does not stand indifferent in the cause, another shall be called and placed in his stead, for the trial of that cause.

Court may examine person called as a juror in civil cases, as to his competency.

§ 39. Whenever the pannel or array of grand or petit jurors, or both, summoned to attend any circuit court, shall be set aside upon challenge thereto, the court shall forthwith order a grand or petit jury, or both, if occasion may require, to be summoned in the same manner, as if no jury had been drawn and summoned, or returned.

Array being set aside on challenge, &c. another shall be summoned.

§ 40. A juror, summoned to complete either one of the regular juries for the week or term, or a juror, summoned to enable the court to proceed with business, when the regular juries are engaged in the trial of cases, shall not be compelled to serve longer than the day for which he was summoned, unless he should be detained until the next day or longer, in trying an issue, or in executing a writ of inquiry, submitted to the jury of which he is a member.

Tales jurors required to serve but a day, unless &c.

§ 41. All such jurors, as are described or referred to in the last section, shall be known as *talesmen*; when they serve more than one day, shall be entitled to receive the same *per diem* pay that is allowed to those summoned on the original *venire facias*.

Serving more than one day, to be paid.

§ 42. It shall not be a cause of challenge to the pannel or array of jurors that the clerk of the county, who drew them, was a party or interested in such cause, or was counsel or attorney for, or related to, either party therein; nor shall it be a good cause of challenge to the pannel or array, that the jurors were summoned by the sheriff, who was a party or interested in such cause, or related to either party therein, unless it be alleged in such challenge and satisfactorily shown, that some of the jurors drawn by the clerk were not summoned, and that such omission was intentional: *Provided, however*, That no juror, whom the sheriff has had a discretion in selecting, shall be competent, if objected to by the adverse party, to sit on the trial of any cause, in which the sheriff is a party or interested, or in which any relation of the sheriff is a party on record or in interest.

No cause of challenge to the array, that the clerk who drew, or the sheriff who summoned them, was a party, interested &c.

Proviso.

§ 43. It shall be lawful for the court, before which any *talesmen* are summoned to attend, to impose a fine, not exceeding twenty dollars, upon all such as are regularly summoned, and do not appear in court when called, or who, after appearance, willfully withdraw themselves during the same day, without leave of court; and for the recovery of a fine imposed in virtue of this section, a conditional judgment shall be rendered, and a *scire facias* issue, as in other cases of defaulting jurors.

Penalty for non-attendance of *talesmen*.

§ 44. If the clerk of the county court, or sheriff of any county, shall be guilty of any fraud, by practicing on the jury box, previously to a draft, or in drawing a juror, or returning into the box the name of a juror, which had been lawfully drawn out, or in drawing and substituting another in his stead, or in any other way in the drawing of jurors, he shall be deemed guilty of a misdemeanor, and,

Fraud of clerk of county court or sheriff, in drawing jury.



How punished. on conviction thereof, be fined in a sum not less than two hundred, and not exceeding one thousand dollars, and his office shall be thereby vacated.

Allowing tampering, or fraud by others. § 45. If the clerk of the county court, or sheriff, shall allow any person to examine the ballots, containing the names of the householders and freeholders, from which juries are to be drawn, as aforesaid, to obliterate or withdraw the ballots, or any one of them, or substitute others in their stead, he shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished as in the last section provided.

How punished. Oath to be administered to jurors of the venire. § 46. The clerk of the circuit court shall, in the presence of the court, administer to each of the jurors, summoned upon the *venire facias* for the term or week, (as the case may be,) before entering on the discharge of their duties, the following oath or affirmation:

Oath of talesmen. "You and each of you, do solemnly swear or affirm, (as the case may be,) that you will, well and truly, try all issues, both in civil and criminal cases, and execute all writs of inquiry, which shall be submitted to you, and left to your decision by the court, during the present term or week, (as the case may be,) and true verdicts render according to the evidence." And the same oath or affirmation shall be administered to the *tales* jurors, substituting the word "day," for "term or week."

Board to be allowed jury, when. § 47. In all cases in which the jury may be detained more than one day by the court, and are not allowed to disperse before returning their verdict, it shall be the duty of the court, to make a reasonable allowance to any person boarding the jury, during the time of their detention, and tax the same in the bill of costs, which shall be paid as other costs in the case.

Boxes with juror's names to be secured by lock. § 48. The boxes, required to be provided by the several clerks of county courts, for the safe keeping of the ballots containing the names of jurors as aforesaid, shall be secured with sufficient locks, to which no person but the respective clerks shall have access; and such locks, together with the boxes, shall be paid for by the county treasurer.

How paid for. Jurors for county court, how drawn, summoned, &c. § 49. At the same time that a jury is drawn for the circuit court, twenty-four jurors shall, in the same manner, be drawn for the county court, who shall be summoned in the same manner as jurors for the circuit court, and shall be subject to the same fine for non-attendance; and all the rules and regulations, in relation to petit jurors in the circuit court, shall extend to and govern jurors for the county court.

When juror becomes sick or incapacitated, during a trial, he may be withdrawn and another summoned, &c. § 50. When a trial shall be commenced in any civil or criminal case, before any court having cognizance of the same, and during the progress of such trial, a juror shall become so unwell, or incapacitated, that, in the opinion of the court, he is unable to serve, such juror may be allowed to withdraw, and the sheriff shall be required to summon forthwith, a juror to supply his place, who shall be sworn, and the trial be commenced anew; and the verdict, rendered by the jury, shall be as effectual in law, as if there had been no interruption in the progress of the cause, unless sufficient cause be shewn by either party, for a continuance.

Plea in abatement to array of grand jury, or any member, not allowed after term of finding—nor the § 51. No plea in abatement shall be allowed to the array of the grand jury, nor of the disqualification of any member of the same, except at the term at which the indictment is found, and if sustained, either on demurrer or by verdict, the court shall not discharge the accused, but shall hold him in custody, or discharge or bail in bail.



able cases, to answer to another indictment, at the same, or the next term of the court, and the delay, thus occasioned, shall not be computed within any of the acts of limitations barring the prosecution of offences.

§ 52. In all civil causes, sounding in damages merely, or where the amount in controversy shall exceed one hundred dollars, either party, at his election, shall be furnished with a list of twenty-four jurors in attendance on such court, from which a jury shall be obtained by the parties alternately striking one from the list until twelve shall be stricken off, the plaintiff commencing: and the jury, thus obtained, shall not be further challenged for any cause.

§ 53. Every person, who shall be indicted for an offence, capital-punished, shall, if in actual confinement, have a copy of the indictment, and a list of the jury, which are summoned for his trial, delivered to him or her at least two entire days (1) before he or she shall be tried for the same; and the court before whom such person shall be tried, or some judge thereof, shall, immediately, upon his or her request, assign to such person, such counsel, not exceeding two, as such person shall desire, to whom such counsel shall have free access at all reasonable hours; and if such person, charged as aforesaid, shall not be in actual custody, but shall have counsel in court, whose names are entered of record, such counsel shall be served with a copy of the indictment and a list of the jury, as above provided; but if the pannel be exhausted by challenge or otherwise, it shall not be necessary to furnish the prisoner with a list of the jurors summoned to supply their place.

§ 54. In order to the trial of the person charged with a capital offence, it shall be the duty of the court, in which such trial is to take place, to make an order requiring the sheriff to summon not less than fifty and not exceeding one hundred jurors, including those in attendance on the regular juries for the week or term, and the names of the jurors so summoned, together with those attending upon the regular juries, shall be written upon slips of paper, folded or rolled up, and placed in a box or some substitute therefor, and shaken together, and such person as the court shall designate shall, in its presence, draw out the ballots one by one, until the jury shall be completed: if all the ballots shall be drawn, and the jury be still incomplete, it shall be the duty of the court to make an order requiring the sheriff to summon at least twice the number of jurors required to complete the jury, from whom the jury shall be completed by drawing as aforesaid.

§ 55. Upon a trial for any capital offence, the accused shall be allowed twenty-one peremptory challenges; on a trial for any penitentiary offence, the accused shall be allowed fifteen peremptory challenges; and on a trial for any other offence, six: the state shall be allowed fourteen peremptory challenges, on a trial for a capital offence; ten on a trial for a penitentiary offence; and four on a trial for any other offence: it shall be a good challenge for cause, for either the accused or the state, that the juror has not been a resident householder or freeholder within the county, for two years next preceding the time when he is sworn; second, if he is not a citizen of the United States; third, if he is connected by consanguinity to either the accused, the prosecutor, or the person alleged to be injured, within the ninth degree, computing according to the rules of the civil

defendant to be discharged, if decided in his favor.

In civil cases, involving more than \$100, special jury may be claimed.

In capital cases, accused to have copy of indictment and list of jury, two entire days before trial. [a 1807—(6) Sec. 47.]

For trial of a capital charge court shall order sheriff to summon not less than 50 nor more than 100 jurors, including regular jury. Jury, how drawn.

In capital cases, twenty-one peremptory challenges allowed to accused: in penitentiary cases, fifteen: in other cases, six. State's peremptory challenges. What shall be good cause of challenge.

(1) In computing the time of delivering the list of the jury, the day of delivery and day of trial must both be excluded. *The State v. McLendon, 1 Stewt. Rep. 195.*



law, or by affinity to either of the said persons within the fifth degree, computing by the same rules; fourth, if the juror has been indicted within twelve months for an offence of the same nature, of which the accused is charged; fifth, if the juror has, when sworn, any fixed opinion as to the guilt or innocence of the accused, which would bias his verdict; sixth, if he has any interest in the conviction or acquittal of the accused, or has made any promise or given any assurance, that he will convict or acquit the accused: the first four causes of challenge may be ascertained, by the oath of the juror, or by other evidence; the fifth shall be established alone by the oath of the juror; and the sixth alone by testimony adduced to the court; and in all trials for a capital or penitentiary offence, it shall be a good challenge for cause, if the juror has a fixed opinion against capital or penitentiary punishments, or that a conviction should not be had on circumstantial evidence; which may be ascertained as the first four causes of challenge above.<sup>1</sup>

Juror, summoned in capital case, failing to attend—penalty.

§ 56. Every person, summoned as a juror, by order of court, for the trial of a person charged with an offence, capitally punished, shall be liable for disobedience or neglect, to be fined in a sum not less than fifty dollars, which fine may be reduced by the court if the circumstances justify a reduction, which shall be collected and applied in the same manner as fines imposed upon jurors in other cases.

## CHAPTER XI.

### *Of Indictments.*

Duty of clerk on the return of an indictment into court.

§ 1. It shall be the duty of the clerk of the circuit court, when an indictment is returned into court by the grand jury, to enter on the minutes of the court, a brief statement of the nature of the indictment, and the finding of the jury, and to indorse on the bill of indictment, that it was filed in court; and if the entry of such finding is omitted at the proper time, it shall and may be lawful for the court, at any subsequent term, on examination into the verity of the indictment and its return, to have the proper entry made *nunc pro tunc*.

When *nolle prosequi* may be entered.

§ 2. It shall not be lawful for the attorney-general, solicitor, or other prosecuting officer, to enter a *nolle prosequi* on any indictment,

<sup>1</sup> The following section of the act of Jan. 10th, 1831, "more effectually to secure trials in capital cases by impartial jurors," (Aik. Dig. 122, 123,) seems to be still in force:

"§ 1. In the selection of a jury for the trial of a person, charged with the commission of a capital crime, it shall be the duty of the court, after the juror is sworn to make true answers to such questions as may be demanded of him by the court, to ask the juror, if he has formed and expressed an opinion as to the guilt or innocence of the prisoner at the bar. If the juror answers, that he has formed and expressed an opinion, then the court shall demand of him, whether the opinion, he has so formed and expressed, is formed upon his own knowledge of the facts, or upon rumor. If he answer, that the opinion, so formed and expressed, is formed upon his own knowledge of the facts, then he shall be rejected: but, if he answer, that his opinion, so formed and expressed, is formed upon rumor, then he shall be sworn in chief, unless challenged by the prisoner, or prosecuting officer." (1)

(1) For the construction of this section, see *Quesenberry vs. the State*, 3 *Stewart & Porter*, 308. It is there decided, that an opinion derived from information from "a man, in whose veracity the juror had implicit confidence, who said that he had received his information from one of the witnesses," rendered him incompetent.



or in any other way to discontinue or abandon the same, without the leave of the court, having jurisdiction to try the offence charged, being first had, and entered on its minutes.

§ 3. When any person presents himself as a prosecutor, on an indictment found, or to be preferred, it shall be the duty of the attorney-general, solicitor, or other prosecuting officer, to indorse the name of such person as prosecutor, on the indictment; but if no one will consent to become the prosecutor, it shall be the duty of the attorney-general, solicitor, or other prosecuting officer, if, in his opinion, the evidence authorizes the conviction of any person supposed to be guilty of an offence, to prefer a bill to the grand jury, without the name of any prosecutor indorsed thereon; and it shall be no objection to any indictment, that the name of the prosecutor is not thereon indorsed.

When there is a prosecutor, his name to be indorsed on indictment.

No objection to indictment that no prosecutor is indorsed. Who may issue *capias* against one indicted.

§ 4. A writ, or *capias*, for the arrest of any defendant indicted, may be issued by the clerk of the court, in which such indictment may be, by any judge of the circuit court, or the judge of the county court of the county in which such indictment may be found, either in vacation, or during the sitting of the court.

§ 5. If the offence, for which the party is so arrested, shall be a misdemeanor, it shall be the duty of the sheriff to take the parties' recognizance, with sufficient sureties, in such sum as the character of the prosecution may require, and if the offence is punished by imprisonment in the penitentiary for life, or a term of years, or is a capital offence, he shall then convey the offender to the common jail, and there keep him in safe custody until discharged in due course of law.<sup>1</sup>

Sheriff may recognize party charged with misdemeanor.

If capital, or penitentiary offence, sheriff must commit.

§ 6. Whenever any person, indicted for any offence, shall be let to bail, the officer taking the recognizance, shall file the same with the clerk of the circuit court of the county in which the indictment was found, previous to the first day of the next term of that court.

Recognizances to be filed with clerk of circuit court.

§ 7. It shall be the duty of the clerk of the court, in which an indictment is found, or any proceeding instituted, upon the application of the defendant, gratuitously to issue subpoenas, as well during the sitting of the court, as in vacation, for such witnesses, as such defendant shall require, residing in or out of the county.

Clerk to issue subpoenas for accused gratuitously.

§ 8. The attorney-general, solicitor, and every other prosecuting officer, shall have power to issue subpoenas for witnesses, in support of any prosecution, to appear at any court within his circuit; and every such subpoena, subscribed by the prosecuting officer issuing the same, shall be as valid and effectual, as if the same had been reg-

Attorney-general, solicitor, &c., may issue subpoenas for prosecution.

<sup>1</sup> The following section of "An Act to enable sheriffs and coroners to take recognizances in certain cases therein named," Dec. 28th, 1832, (Aik. Dig. 117.) imparts more extensive powers than the above section, and is therefore here inserted:

"§ 1. When any sheriff, deputy-sheriff, or coroner shall execute a *capias* upon any person charged by indictment or presentment, with an offence against the laws of this state, and wherein bail before a justice of the peace, by law is allowed to be taken, such sheriff, deputy-sheriff, or coroner, as the case may be, shall be authorized to take the recognizance of the defendant, and security or securities for his, her, or their appearance at court, to answer to the charge against him, which recognizances shall, by the officer taking them, be returned to the proper court, certified in the same manner, and shall have the same effect, as if taken before a justice of the peace, or judge; and the sheriff, deputy-sheriff, or coroner, taking the same, shall receive the same compensation, which is allowed justices of the peace for like services, and shall be liable to the same penalties for failing to return the same to court."



ularly issued by the clerk of the circuit court; and disobedience thereto shall be punished in the same manner, and upon the like proceedings to be had, as provided by law in cases of subpoenas returnable to any circuit court.

Prisoner standing mute, plea of not guilty entered.

§ 9. If a person, on his arraignment, shall refuse or neglect to plead, the court shall cause the plea of not guilty to be entered of record, and proceed to the trial of the cause.

Plea in abatement to be verified by oath, matter of record, &c.

§ 10. No plea in abatement, or other dilatory plea to an indictment, shall be received by any court, unless the party, offering such plea, shall verify the same by affidavit, or unless its truth shall appear by some matter of record, or other written evidence accompanying it.

Two or more on trial jointly & no evidence against one, he may be acquitted & become witness.

§ 11. Whenever two or more persons shall be charged in the same indictment, and it shall appear, that there is not sufficient evidence to put the defendant on his defence, after the testimony for the prosecution shall have closed, and the evidence of such defendant is desired by a co-defendant, it shall be the duty of the court, to direct a verdict of acquittal, in favor of the defendant against whom there is no sufficient proof, and judgment shall, thereupon, be rendered accordingly.

## CHAPTER XII.

### *Of the Writ of Habeas Corpus, and Proceedings thereon.*

Every one restrained of liberty entitled to writ of habeas corpus.

§ 1. Every person, committed, confined, or in any manner restrained of his liberty, for any matter, either criminal or supposed to be so, or under any pretence whatever, may prosecute a writ of habeas corpus, according to the provisions of this chapter, to enquire into the cause of such commitment, confinement or restraint.

How proceed when person is held in custody elsewhere than in jail or penitentiary.

§ 2. Whenever oath shall be made before any justice of the peace, clerk of the circuit or county court, or before any judge or chancellor, that any free person is detained, or held in illegal custody, by any person, in any other place than the penitentiary, or the common jail of the county, it shall be the duty of such justice of the peace, clerk, judge, or chancellor, to issue a writ directed to the sheriff or coroner, commanding him to take into his custody the person so alleged to be illegally detained or confined, and forthwith to have him before the judge of the county court, or some judge of the circuit court, or some chancellor, as may be most convenient; and such judge, or chancellor, shall examine into the cause of the detention, and, if the same is illegal, shall discharge the person so detained; if otherwise, he shall, by warrant in writing, commit the person to the proper custody.

In what cases judge of county court may grant writ of habeas corpus.

§ 3. Whenever any person is confined in the county jail, on any cause whatever, other than a commitment for, or a conviction of, felony, or by the sentence or decree of the circuit court, or court of chancery, and oath shall be made, in the manner hereinafter provided, that his confinement is illegal, it shall be the duty of the judge of the county court, to issue a writ of habeas corpus, to cause the person so confined to be brought before him; and if the detention is illegal, he shall be discharged; if otherwise, he shall be committed by warrant, to the proper custody, or admitted to bail, as may be in accordance with law.

Judge of circuit court, or chancellor

§ 4. Whenever any person is confined in the county jail, on any charge whatever, and petition on oath shall be made, in the manner



hereinafter provided, that his confinement is illegal, it shall be the duty of any judge of the circuit court or chancellor, to issue a writ of *habeas corpus*, returnable at such time and place as he shall direct, either in term time or in vacation; and the court, judge or chancellor, before whom the writ is made returnable, shall examine into the cause of confinement, which, if unwarranted by law, the person confined shall be discharged, and, if otherwise, he shall be committed by warrant to the proper custody, or be admitted to bail in accordance with law.

§ 5. Whenever any person is confined in the penitentiary on any charge or pretence whatever, and petition, on oath, shall be made, in the manner hereinafter provided, that his confinement is illegal, it shall be the duty of any judge of the circuit court or chancellor, to issue a writ of *habeas corpus*, returnable to the next ensuing term of the circuit court of Coosa county, and said court shall examine into the cause of confinement, and, if illegal, shall discharge, and, if otherwise, shall recommit the prisoner, or cause to be instituted such proceedings, as may be necessary to a legal imprisonment.

§ 6. Application for such writ shall be made by petition in writing, signed either by the party for whose relief it is intended, or by some person in his behalf, and addressed either to the court of chancery, when in session, to the circuit court, and, in a proper case, to the county court of the county in which the petitioner is confined or restrained of his liberty; and if neither of these courts are in session, then to the chancellor or judge of the circuit court, or judge of the county court, in the case in which the last mentioned judge shall have jurisdiction.<sup>1</sup>

§ 7. The petition must state in substance:

1st. That the person, in whose behalf the writ is applied for, is imprisoned or restrained of his liberty, the officer or person by whom he is confined or restrained, and the place where; naming him, if his name is known, or describing him, if it is not:

2d. The cause or pretense of such confinement or restraint, according to the best of the knowledge and belief of the petitioner:

3d. If the confinement or restraint is by virtue of any warrant, order or other process, a copy thereof shall be annexed, or it shall be made to appear, that a copy thereof has been demanded and refused, or that, for some sufficient reason, a demand of such copy could not be made:

4th. It must be verified by the oath of the party or some other person cognizant of the facts stated therein.

§ 8. Whenever application for any such writ shall be made to any magistrate not residing in the county where the prisoner shall be detained, he shall require proof, by the oath of the party applying, or by other sufficient evidence, that there is no officer in such county authorized to grant the writ, or, if there be one, that he is absent or has refused to grant such writ, or, for some cause to be

<sup>1</sup> The following section of "An Act for the more effectual preservation of personal liberty," Feb. 10th, 1807, (Aik. Dig. 347.) is still in force:

"§ 3. When any prisoner, as aforesaid, or other person in his behalf, shall, personally or by writing, apply to the clerk of the superior court of the county in which such prisoner may be confined, and shall pay or tender to him fifty cents for so doing, such clerk shall, without delay, draw up a petition for and in the name of such prisoner or other person, requesting that he may be brought before the judge, to whom the same is addressed, for the purposes hereinbefore expressed, and which shall be subscribed and attested as aforesaid."



specially set forth, is incapable of acting; and if such proof be not produced, the application shall be denied.

Application  
to be made to  
nearest judge  
or chancellor

§ 9. The application for the writ of *habeas corpus*, when made to a chancellor or judge of the circuit court, shall be made to the chancellor or such judge residing or being nearest the place where the petitioner is confined or restrained of his liberty.

Writ to be  
awarded  
without de-  
lay.

§ 10. The court or magistrate, to whom such petition shall be addressed, shall, without delay, award a writ of *habeas corpus*.

§ 11. Every writ of *habeas corpus* issued under the provisions of this chapter, shall be in substance as follows:

Form of  
writ.

“The State of Alabama—To the sheriff or jailer &c. (as the case may be) of \_\_\_\_\_ county: We command you, that you have the body of C. D., by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C. D. shall be called or charged, before our court of chancery or circuit court, (as the case may be) or before A. B. chancellor or judge of the circuit court (as the case may be) at &c. on &c. (or immediately after the receipt of this writ) to do and receive what shall then and there be considered concerning the said C. D., and have you then and there this writ. Witness, &c.”

Not to be dis-  
obeyed for  
want of  
form.

§ 12. The writ of *habeas corpus* shall not be disobeyed for want of form, but when written in terms intelligible, it shall be deemed sufficient.

How writ  
shall be sign-  
ed, and how  
served.

§ 13. When such writ is issued in vacation, it shall be signed by the magistrate issuing the same, and when issued in term time, or during the sitting of the court, it shall be signed by the clerk in the same manner as other writs are signed, and, in either case, shall be served in any county, by any sheriff, or deputy-sheriff, or constable of the same or any other county.

To what  
court or  
judge return  
shall be  
made.

§ 14. If the court, to which the writ is returnable, shall be adjourned before it is returned, the return shall be made before any judge of the said court, or before any other judicial officer having jurisdiction to inquire of and determine the matter, and, if the writ is, in any case, returned before a judge at a time when the court is in session, he may adjourn the case into the court, to be there heard and determined in like manner as if the writ had been returned into the same court.

When writ  
of *habeas*  
*corpus* shall  
be returned.

§ 15. Any person, to whom the writ is directed, shall receive it, and shall make due return thereof, at the day designated therein, if it be practicable to do so, but, if no day is appointed in the writ for its return, the same shall be returned within two days after its reception, if the place, to which the prisoner is required to be conveyed, does not exceed thirty miles from the place of confinement; if it exceeds thirty and is within one hundred miles, he shall return the writ within five days; if more than one hundred, he shall return it within eight days.

What return  
shall con-  
tain.

§ 16. The person, upon whom any such writ shall have been duly served, shall plainly and explicitly state in his return,

*First*—Whether he has or has not the party whose body is required to be brought up, in his custody, or under his power or restraint:

*Second*—If he has the party in his custody, or under his power or restraint, he shall set forth at large, by what authority, and the true and entire cause of such imprisonment or restraint, with a copy of the writ, warrant, order or other process, if any, upon which the



party is detained, and the original shall be produced on the return of the writ, to the court or officer to whom the same is returnable:

*Third*—If he has not the party in his custody or power, or under his restraint, and has transferred such custody or restraint to another, the return shall state explicitly, to whom, at what time, for what cause, and by what authority such transfer was made.

§ 17. The return, so to be made as aforesaid, shall be signed by the person making it, and it shall also be sworn to by him, unless he is a sworn public officer, and shall make return in his official capacity: at the time such return is made, the party making it shall bring the body of the prisoner within his custody or power, or under his restraint, according to the command of the writ, unless prevented by sickness or infirmity, which would render his conveyance improper or impracticable.

To be signed by person making it, & sworn to in certain cases. Prisoner to be brought, unless, &c.

§ 18. When from the sickness or infirmity of the party, he cannot, without danger, be brought to the place appointed for the return of the writ, that fact shall be stated in the return; and if it is proved to the satisfaction of the court or magistrate, he may proceed to the jail or other place, and there make his examination, or may adjourn the same to another time, or make such other order in the case, as law and justice shall require.

If he cannot be brought before judge, how to proceed.

§ 19. When the writ of *habeas corpus* is returned, the court or judge shall, without delay, proceed to examine the causes of the imprisonment or restraint, but the examination may be adjourned from time to time, as circumstances may require, or as the correct administration of the laws may seem to demand.

Causes of imprisonment to be examined.

§ 20. When it appears from the petition for a *habeas corpus*, that the party is detained on any process under which any other person has an interest in continuing his imprisonment or restraint, it shall be the duty of the court or magistrate, to indorse on the writ, an order requiring the petitioner, or some one else, on his behalf, to give notice to such interested person or his attorney, of the issuance of the writ and the time and place, when and where the same is returnable: the prisoner shall not be discharged until sufficient notice shall have been given to such person or his attorney, if within the state, or within fifty miles of the place of examination, to appear and object to such discharge, if he think fit.

Any person having an interest in prisoner's confinement to have notice, &c.

§ 21. When it appears from the petition, that the party complaining is imprisoned on any criminal accusation, the court or judge, awarding the writ, shall indorse on the same an order requiring the prisoner or some one on his behalf, to give notice to the solicitor or attorney-general, (as the case may be) of the time and place, when such writ is returnable, in order that he may appear and object to the discharge if he think proper; and it shall, furthermore, be the duty of the prisoner or some one on his behalf, to give notice of similar import to the prosecutor, or principal agent in procuring his arrest; and such court or magistrate shall not discharge any prisoner, until sufficient notice shall have been given as aforesaid: *Provided, however*, That, if the prosecutor shall reside more than fifty miles from the place where the writ is returnable, it shall not be incumbent on the prisoner to show that he has had notice.

Attorney-general, or solicitor to have notice when confinement is on a criminal charge.

Prosecutor to have notice.

Proviso.

§ 22. When any writ of *habeas corpus* shall have been issued and made returnable at any particular time and place, it shall be the duty of the court or magistrate issuing the same, or any justice of the peace of the county in which a witness may reside, to issue subpoenas for such witnesses as shall be deemed necessary, either on the part of the state or of the defendant; which subpoenas shall be

Witnesses to be summoned for the state and prisoner.



directed to the sheriff or some constable of the county, in which such witnesses may reside, commanding such sheriff or constable, (as the case may be,) to summon such witness or witnesses, to appear at the time and place the said writ is made returnable, then and there to testify and give evidence, either in behalf of the prisoner or the state; and such sheriff or constable shall be allowed the same fees therefor, as for serving subpoenas in other cases, and every witness, so summoned, shall be bound to attend, under the penalty prescribed for the compulsion of the attendance of witnesses in state cases in the circuit courts, and for his or her attendance shall be entitled to the same fees that are allowed by law for witnesses in such cases.

If witnesses make default, how to proceed.

§ 23. On the failure of any witness to attend at the time and place required by such subpoena, it shall be the duty of the court or magistrate, to record such failure, and to transmit, either the original or a copy of such record to the clerk of the circuit court of such county, in which the examination took place; and it shall be the duty of the clerk of the circuit court forthwith to issue a writ of *scire facias*, requiring the defaulting witness to appear at the next succeeding court, to show cause why the forfeiture, so recorded, as aforesaid, should not be made absolute.

Witness may prove his attendance.

§ 24. It shall be the duty of the court or magistrate, before whom any witness may be summoned, as aforesaid, to appear and give evidence, to permit such witness to prove his attendance, and transmit the same to the clerk of the circuit court, to the end that it may be taxed in the bill of costs, if the petitioner should be ultimately convicted.

Prisoner may controvert the facts stated in the return to the habeas corpus, and they shall be tried &c.

§ 25. The party imprisoned or restrained may deny any of the facts set forth in the return, and may allege any other facts, that may be material in the case, and the court or magistrate shall proceed, in a summary way, to examine the causes of imprisonment or restraint, and hear the evidence that may be produced, by any person interested, or that may be authorized to appear, both in support of such imprisonment or against it, and, thereupon, to dispose of the party, as law and justice shall require; and if no legal cause be shown for the imprisonment or restraint, the court or judge shall discharge the party therefrom.<sup>1</sup>

Upon return of the writ, subpoenas may issue for witnesses.

§ 26. The court or magistrate, before whom the writ of *habeas corpus* may be returnable, shall be authorized upon the return of such writ, to issue subpoenas for witnesses, in the same manner as if the application had been made therefor previously, and they shall be directed and served in the same manner, and for disobedience to which there shall be the same penalty, and for serving which the same fees shall be allowed, and the witnesses shall be entitled to the same compensation, as is provided for witnesses in state cases in the circuit courts: *Provided, however,* That the court or magistrate shall not be obliged to issue subpoenas, as provided for in this section, unless they believe that the correct administration of law and justice

Proviso.

<sup>1</sup>The following section of "An Act for the more effectual preservation of personal liberty," Feb. 10th 1807, (Aik. Dig. 348,) is unrepealed:

"§ 7. Nothing in this act shall extend to discharge out of prison any person guilty, or charged with any offence, committed in any other part of the United States, and who, agreeably to the laws of Congress, ought to be delivered up to the executive power of such state; nor any person charged with debt or other action, or with process in any civil cause, or suffering imprisonment under lawful judgment founded on a conviction of some criminal offence."



require it, and that the parties are not greatly in fault in not having previously applied for them.

§ 27. When any person is committed to jail, on any criminal accusation for want of bail, it shall be competent for the sheriff of the county, from which he is sent, or to which he is committed, to admit him to bail, by taking his recognizance, with sufficient sureties, in such sum as may have been required by the court or magistrate who committed him; and if no sum was prescribed by such court or magistrate, then the clerk of the circuit court and sheriff shall, upon a view of the evidence taken down in writing, by the committing magistrate, prescribe the sum in which the prisoner shall be recognized, as aforesaid: *Provided, however,* That, if, in the opinion of the prisoner, the bail required of him be excessive he may prosecute his writ of *habeas corpus*, as herein before provided, that the penalty, prescribed for the recognizance, may be lessened.

§ 28. It shall be the duty of every court or magistrate before whom an inquiry shall be made into the cause of one charged with a criminal offence, which is bailable, to admit to bail, if sufficient bail be offered; and if not, it shall be the duty of such court or magistrate, to indorse on the warrant of commitment, the sum for which bail was required, and the court before which the prisoner shall appear to answer.

§ 29. If the party complaining is committed, on *mesne process* in any civil action, for want of bail, and it shall appear, that the sum, for which bail is required, is excessive and unreasonable, the court or magistrate, awarding a *habeas corpus*, shall decide what bail is reasonable, and shall order that, on giving such bail, the party shall be discharged.

§ 30. If the party is lawfully imprisoned and restrained, and is not entitled to enlargement on bail, he shall be remanded to the prison or person from whose custody he is taken, or to such other person or officer as by law is authorized to detain him.

§ 31. Until judgment be given upon an examination on *habeas corpus*, the court or magistrate may remand the prisoner, or may commit him to the sheriff of the county, or continue or place him under such other custody as the circumstances of the case may require, or, if the charge be of a character to authorize it, may recognize him to appear from day to day.

§ 32. Any officer, who shall refuse or neglect, for six hours, to deliver a true copy of the warrant, order or process, by which he detains any prisoner, either to such prisoner, or to any person who shall demand such copy on his behalf, shall forfeit and pay to such prisoner, the sum of two hundred dollars, to be recovered by action of debt, and shall, also, be guilty of a misdemeanor, and, on conviction, shall be fined not less than fifty, and not exceeding five hundred dollars: *Provided,* That such officer shall not be required to deliver, notwithstanding any number of demands therefor, more than two copies of such warrant, order or process.

§ 33. If any person, to whom a writ of *habeas corpus* shall be directed, shall refuse to receive the same, or shall neglect to obey and execute it according to the provisions of this chapter, and no sufficient excuse shall be shown for such refusal or neglect, the court or magistrate, before whom the writ is returnable, shall proceed forthwith, by process of attachment, as for a contempt, to compel obedience to the writ, and punish the person guilty of such contempt; and such person shall, also, be guilty of a misdemeanor, and, on conviction, shall be fined not less than fifty and not exceeding five hundred

In what cases sheriff may take bail.

Proviso.

In bailable cases, magistrate to indorse amt of bail requir'd, on commitment.

If excessive bail has been required on mesne process, it may be reduced on habeas corpus.

When prisoner to be remanded.

Custody of prisoner pending the examination.

Refusal, or neglect of an officer, having custody of prisoner, to furnish copy of warrant, &c. for detention.

Proviso.

Neglect or refusal to obey habeas corpus, how treated.



dollars, and, in addition, shall answer in damages to the party aggrieved.

Attachment issued vs. sheriff, or deputy, to be directed to coroner.

§ 34. If such attachment shall be issued against a sheriff, or his deputy, it may be directed to any coroner, or to any other person designated therein, who shall have full power to execute the same; and if the sheriff, or his deputy, shall be committed upon such process to the jail of his own county, the coroner or jailer, if any there be, shall be the keeper of such jail, uncontrolled in any manner by the sheriff.

On neglect or refusal of person to whom *habeas corpus* is directed, magistrate may issue a precept to any other officer, &c.

§ 35. Upon such refusal or neglect of the person to whom the writ of *habeas corpus* is directed, the court or magistrate may, also, issue a precept, to any officer, or other person to be designated therein, commanding him to bring forthwith before such court or magistrate, the person, for whose benefit the writ was issued, and the prisoner shall, thereupon, be discharged, bailed, or remanded, in the same manner as if prompt obedience had been yielded to the writ of *habeas corpus*.

Attempt to elude service of writ of *habeas corpus*, or avoid the effect thereof.

§ 36. If any one, who has in his custody, or under his power, any person entitled to a writ of *habeas corpus*, whether any writ has issued or not, shall, with intent to elude the service of such writ, or with intent to avoid the effect thereof, transfer such prisoner to the custody, or place him under the power or control of any other person, or conceal him, or change the place of his confinement, the person, so offending, shall forfeit and pay to the party aggrieved thereby, the sum of five hundred dollars, to be recovered by action of debt, and shall also be guilty of a misdemeanor, and, on conviction, be fined not less than fifty, and not exceeding five hundred dollars; and every one, who shall knowingly aid and assist in a violation of the provisions of this section, shall be deemed guilty as a principal offender, and punished accordingly, and shall be imprisoned in the county jail twelve months.

How writ may be served.

§ 37. Every writ of *habeas corpus*, issued pursuant to this chapter, may be served by delivering a copy of the same, and showing, when demanded, the original, to the person to whom it is directed, and, if he cannot be found, it may be served by being left at the jail, or other place, in which the prisoner may be confined, with any officer, or other person of proper age, having charge, for such time, of the prisoner.

May be affixed on dwelling-house, &c. of person to whom directed.

§ 38. If the person, upon whom the writ ought to be served, conceal himself, or refuse admittance to the party attempting to serve the same, it may be served by affixing a copy of the writ to some conspicuous place on the outside, either of his dwelling-house, or of the place where the party is confined.

Cases in which prisoner, confined under civil process, may be discharged.

§ 39. If it appears, on the return of the writ of *habeas corpus*, that the prisoner is in custody, by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him authorized by law, such prisoner can only be discharged in one of the following cases: *first*, when the jurisdiction of such court has been exceeded, either as to matter, place, sum or person; where, though the original imprisonment was lawful, yet, by some act, omission or event, which has subsequently taken place, the party has become entitled to be discharged; *second*, when the process is defective in some matter of substance, rendering such process void; *third*, where the process, though in proper form, has been issued in a case not allowed by law; *fourth*, where the person, having the custody of the prisoner, under such process, is not the person empowered by law to detain him; *fifth*, where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law: but the court may, in all cases, previous to a trial and conviction for any offence, on a full and fair hearing under a writ

In the sound discretion of the court to allow bail in all cases before conviction.



of *habeas corpus*, admit the party accused to bail, if the circumstances justify bail, in the sound discretion of the court.

§ 40. No person, imprisoned for any criminal, or supposed criminal offence, shall be discharged for any irregularity in the process, order, or warrant of commitment; but it shall be the duty of the court or magistrate awarding a *habeas corpus*, or before whom the same is returned, to inquire into the facts and circumstances of the case, and either discharge, admit to bail, or remand the prisoner, as law and justice may require.

§ 41. No person, who has been discharged upon a *habeas corpus*, shall be again restrained, or imprisoned for the same cause, unless he shall be indicted therefor, or after a discharge for a defect of proof, he shall be again arrested on sufficient proof, and committed by legal process for the same offence.

§ 42. The recognizance, taken before any court or magistrate, for the appearance of a prisoner, brought up on *habeas corpus*, shall be transmitted by him, together with all the proceedings touching the examination, to the clerk of the court, before which such prisoner is bound to appear, and such recognizance shall have the same force, and be proceeded on in the same manner, as other recognizances taken in state cases.

§ 43. If any sheriff, other officer, or person, having the custody of one brought up on *habeas corpus*, shall detain him after an order of the court, or magistrate, for his discharge, or enlargement, or shall afterwards arrest him without a legal and proper cause, warrant, or other precept, such sheriff, other officer, or person, shall be guilty of a misdemeanor, and, on conviction, be fined not less than fifty, and not exceeding five hundred dollars, and, in addition thereto, shall be answerable for any damages such party may have sustained.

§ 44. Every person, who shall knowingly aid and assist in violating the mandate of the writ of *habeas corpus*, or any order thereupon made, or shall knowingly aid, or assist, in the commission of the offence, in the last section provided, shall be deemed guilty as a principal offender, and punished accordingly.

§ 45. The sheriff or other person, having charge of a prisoner directed to be brought up on *habeas corpus*, is authorized to summon a sufficient guard, to aid him in conveying such prisoner before the court or magistrate, before whom the writ is returnable, and any person, summoned as a guard, shall, for disobedience, be subject to the same penalty, as guards are, who refuse to assist the sheriff in conveying convicts to the penitentiary.

§ 46. The sheriff and guard shall be entitled to the same compensation, as is allowed for conveying convicts to the penitentiary, and shall be paid in the same manner.

## CHAPTER XIII.

### *Of Writs of Error, and a Reference of Novel and Difficult Questions.*

§ 1. Whenever, in any criminal case, either on the trial, or on demurrer, or motion in arrest of judgment, any point or question shall arise, which, in the opinion of the presiding judge, is novel and difficult, it shall be his duty, on request, to reserve such point or question, distinctly, upon the record, for the revision of the supreme court,



at its next succeeding term, and the presiding judge shall proceed to render judgment on the conviction; but the execution of the judgment shall be suspended, in cases not capital, or not punished by confinement in the penitentiary, until the next succeeding term of the circuit court rendering the judgment; and the defendant shall be recognized, in good and sufficient sureties, then to appear and abide the judgment so rendered; and in capital cases, or in cases punished by confinement in the penitentiary, the execution of the judgment shall be suspended to a time not less than twenty-five, nor more than forty days, after the commencement of the next succeeding term of the supreme court.

Writ of error upon judgment on indictment may issue upon order of S. court, or one of the judges.

§ 2. Writs of error, upon judgments rendered on any indictment, may issue upon an order to that effect, addressed to the clerk of the court, in which such judgment is rendered, by any one of the judges of the supreme court in vacation, or by the supreme court when in session; but such writs shall only be granted upon a view of the transcript, and at the discretion of the judge or court applied to for that purpose.

Duty of judge of supreme court, awarding writ of error.

§ 3. It shall be the duty of any judge of the supreme court, who shall award a writ of error in vacation, to cause an entry of the same to be made on the minutes of the supreme court at its next term; and all writs of error, which are not prosecuted at the term of the supreme court to which they are returnable, shall be *non prosed*, and no writ of error shall thereafter be allowed.

Order for writ of error to be filed with clerk of the court in which judgment was rendered. Clerk's duty.

§ 4. When an order shall be made, for the allowance of a writ of error as aforesaid, the same shall be filed with the clerk of the court, in which the judgment was rendered, who shall furnish to the party filing the same, the certificate of the filing thereof, together with a copy of the order, and shall make out a writ of error, and transcript of all the record and proceedings had in the case, and after having attached such transcript to the writ, as provided in civil cases, he shall deliver the same, on demand, to the party suing out the writ of error.

When execution of sentence shall be suspended, on award of writ of error.

§ 5. If the defendant, in the case for the removal of which such writ of error shall be allowed, be in the custody of the sheriff of the county, and the order of allowance direct a stay of proceedings on the judgment, it shall be the duty of the sheriff, on being served with the clerk's certificate of such writ being filed, and a copy of the order of allowance, to keep such defendant in his custody, without executing the sentence which may have been passed upon the conviction, and to detain such defendant, to abide such judgment as may be rendered upon such writ of error.

When party suing out writ of error may be bailed.

§ 6. If the offence charged, for the removal of which such writ of error shall be allowed, be punishable by fine, or by fine and imprisonment in the county jail, any judge or court, herein authorized to allow such writ of error, shall, in the order of allowance, direct the clerk of the circuit court, to admit to bail the party suing out the writ of error, upon a recognizance with sufficient sureties, conditioned, that he shall submit to and abide by the judgment which the supreme court may render on such writ of error; and further, that he will appear at the next term of the court in which he was convicted, and deliver himself into custody, or that he will obey such legal order as the last mentioned court shall make in the premises.

No assignment of error nor joinder necessary in

§ 7. No assignment of errors, or joinder in error, shall be necessary in any writ of error, issued in pursuance of the foregoing provisions, but the court shall proceed to examine the transcript, and to



render such judgment on the record before them, as is demanded by criminal law.

§ 8. If the supreme court shall affirm such judgment, it shall direct the sentence pronounced to be executed, and the same shall be executed accordingly: if the supreme court shall reverse the judgment rendered, it shall either direct a new trial, or that the defendant be absolutely discharged, or that he shall be held in custody, until discharged by due course of law.

§ 9. When the day appointed by any sentence for its execution shall have elapsed, the supreme court shall, in the event of the affirmation of the judgment, prescribe by its judgment a day for the execution of the sentence.

§ 10. It shall be lawful for the judges of the circuit courts of this state, to sign and seal bills of exceptions on the part of defendant or defendants in criminal cases, whether capital or not, in the same manner, and under the same liabilities, provided in civil cases: *Provided*, That this statute shall not be considered as applicable to cases of offences not punishable by death or imprisonment in the penitentiary.

Affirmance of judgment by supreme court. Reversal.

When supreme court shall fix day of execution.

[1843—(40) Sec. 1.] Judges of circuit court may sign & seal bills of exceptions for def't in criminal, as in civil cases. Proviso.

## CHAPTER XIV.

### *Of Pardons and Reprieves.*

§ 1. The rules and regulations, under which the pardoning power vested by the constitution in the executive shall be hereafter exercised, shall be the following, and in no other case shall a pardon, or remission, in whole or in part, of any sentence or fine be granted:

*First.* Where the judge, presiding on the trial, and a majority of the jury, who tried the cause, shall, during the term at which the trial was had, in writing signed by them, recommend the prisoner to the mercy of the executive, or a commutation of the punishment from death to a term of years, or for life; and when such recommendation to mercy is made, the clerk of the court shall officially certify thereon, that the signatures thereto were acknowledged, or proved by witness (sworn by him) to be genuine:

*Second.* When it shall be made to appear to the satisfaction of the executive, that important witnesses for the prisoner could not be obtained by him, at the trial of the cause, whose testimony, if before the jury, would, in the opinion of the executive, have varied the result; but in such case the affidavit of such absent witness, if practicable, shall always be required, and his absence from the trial satisfactorily accounted for:

*Third.* When, by the sworn testimony of credible persons, it shall be made to appear to the satisfaction of the executive, that some fact has transpired, subsequent to the trial, establishing the innocence of the prisoner, or rendering his guilt doubtful; and any one swearing falsely, in any matter made necessary by this law, to obtain a pardon, commutation of punishment, or remission of a fine, and being thereof convicted, shall be held guilty of perjury, and punished by imprisonment in the penitentiary, not less than two nor more than seven years.

§ 2. It shall be the duty of the executive, to cause to be entered at large, in a book to be kept for that purpose, his reasons for granting a pardon, commuting a sentence, or remitting a fine, and to preserve on file, all documents and papers on which he acted.

Regulations under which pardoning power may be exercised.

1. When judge & majority of the jury recommend mercy, or commutation.

2. When important witnesses could not be obtained by prisoner on his trial.

3. When some fact has transpired since trial, proving prisoner's innocence, or his guilt doubtful.

Executive's reasons for granting pardon &c. to be entered in a book.



He may grant re-  
prieves, not  
withstand-  
ing.

May remit  
portion of  
imprison-  
ment in pen-  
itentiary, on  
recommend-  
ation of in-  
spectors—on  
what condi-  
tions.

§ 3. Nothing, herein contained, shall be so construed, as to prevent the executive from delaying the sentence of a court, by granting a reprieve.

§ 4. It shall be lawful for the executive, to remit a portion of the sentence of imprisonment of any convict, upon the recommendation of the board of inspectors, setting forth that the convict, thus recommended to the mercy of the executive, has behaved in an exemplary manner during his confinement, and that, in their opinion, his enlargement is not inconsistent with the public welfare; but no such pardon shall be granted, until the convict has remained one-third part of the time for which he was sentenced; and where a convict is sentenced to imprisonment for life, or for more than twenty-one years, seven years shall, within the purposes of this section, be considered as one-third of his sentence.

## CHAPTER XV.

### *Of Slaves and Free Negroes.*

Slave conspiring to rebel or murder white person.

§ 1. Every slave, who shall consult or conspire to rebel or be in any wise concerned in an insurrection or rebellion of the slaves against the white inhabitants of this state, or the laws and government thereof, or shall conspire the murder of any white person, and be thereof convicted, shall suffer death.

Murder, or assault with intent to murder white person, or manslaughter.

§ 2. Every slave, who shall be guilty of murder, or commit an assault with an intent to kill any white person, or shall be guilty of the voluntary manslaughter of a white person, or of the involuntary manslaughter of a white person, in the prosecution of an unlawful act, and be thereof convicted, shall suffer death.

Rape, or attempt to commit, on white female.

§ 3. Every slave, free negro or mulatto, who shall commit, or attempt to commit, the crime of rape on any white female, and be thereof convicted, shall suffer death.

Burglary, robbery, maim, attempt to poison white person, &c.

§ 4. Every slave, who shall commit the crime of burglary, or who shall rob, or commit an assault and battery with intent to rob any white person, or shall willfully maim, put out an eye, or cut, or bite off, the lip, ear, or nose, of any white person, or shall attempt to poison, or to deprive any white person of life, by any means, not amounting to assault, and be thereof convicted, shall suffer death.

Arson—and burning property of various kinds.

§ 5. Every slave, who shall, willfully and maliciously, set fire to, or burn any dwelling-house, or out-house appurtenant thereto, store-house, office, bank-house, ware-house, or other edifice public or private, corn-crib, gin-house, cotton-house, stable, barn, cotton in the heap of the value of one hundred dollars, or in bale, or any ship, steam-boat, or other water craft, used in navigating the waters of this state, and be thereof convicted, shall suffer death.

Accessories, before the fact, deemed principals.

§ 6. All accessories before the fact, to any of the crimes heretofore enumerated, shall be deemed principals and may be tried, though the principal offenders be not taken or convicted.

Manslaughter of slave, or free negro, by slave.

§ 7. Every slave, who shall be guilty of the manslaughter of a slave, free negro, or mulatto, and be thereof convicted, shall be punished by any number of stripes, not exceeding thirty-nine, or be branded in the hand or both, at the discretion of the jury.

Perjury.

§ 8. Every slave, who shall commit the crime of perjury, shall be punished with thirty-nine lashes, and branding in the hand with the letter P.



§ 9. Whenever a slave shall be a witness in any cause, it shall be the duty of the presiding judge to explain to him or her the nature of the oath about being administered; and also, state to him or her, the punishment for swearing falsely; and if the court, before whom any slave is sworn, shall have reason to believe that he or she has sworn falsely, it shall be the duty of the court, to direct him or her to be taken into custody, and, as soon as practicable, to cause a jury to be empaneled to try the fact, and, if such slave be found guilty, the court shall, without delay, cause the proper punishment to be inflicted.

§ 10. The trial of all slaves for capital offences shall be by the circuit court of the proper county, in the mode now provided by law for the trial of white persons; but, on such trial, the slave shall be allowed but twelve peremptory challenges, and the state but four, and at least two-thirds of the jury shall be slaveholders; but, if there be an actual or threatened rebellion of the slaves of this state, it shall be the duty of any justice of the peace, before whom any slave, or free person of color, is brought, charged with a capital offence, if there be probable grounds for believing him or her guilty of the offence charged, to commit him or her to the county jail, and appoint a time for the trial of the offence not more than fifteen days from the commitment; it shall also, at the same time, be the duty of such justice to give a notice of the time of trial to the judge of the county court, and some other justice of the peace, to attend the trial, which notice may be served by the sheriff or any constable; if there be no judge of the county court, one other justice of the peace shall be summoned in his stead to attend, and a majority of the persons, thus summoned, shall constitute a court for the trial of the offence, and, if neither attend, any justice may summon two others forthwith, to attend and try the cause.

§ 11. It shall also be the duty of the justice making such commitment, to require the sheriff, in writing, to summon a jury, to appear at the time appointed for the trial of the accused, and it shall be the duty of the sheriff to summon a jury, possessing the qualifications prescribed by the chapter, entitled grand and petit jury, to consist of twenty-four persons, at least two-thirds of whom shall be slaveholders; and if the pannel should be exhausted by challenges or otherwise, the deficiency shall be made up from the by-standers; but no one having an interest in such slave, shall be a competent juror, or sit on the trial.

§ 12. In all trials thus to be had, it shall be sufficient for the solicitor or counsel, prosecuting for the state, to write out a brief statement of the nature of the crime, and sign his name thereto, to which the accused shall be required to plead; but if he or she refuse, the court shall cause the plea of not guilty to be entered and proceed to the trial of the cause.

§ 13. If the owner of any slave should neglect or refuse to employ counsel to defend the prisoner, the court shall assign counsel for that purpose, who shall be authorized to demand from the owner ten dollars for this service; and, if any free negro be unable to employ counsel, the court shall assign counsel for his defence, who shall be entitled to a fee of ten dollars, to be paid out of the treasury of the state.

§ 14. Trials, to be had as aforesaid, shall be held in the courthouse of the county, where it shall be the duty of the sheriff and clerk of the circuit court to attend, and the clerk shall keep a record of the proceedings on the minutes of the court.

When slave is witness, duty of the court to explain, &c. and to state punishment of false swearing.

Trial of slaves for capital offences—before circuit court. Challenges peremptory. Two-thirds of jury to be slaveholders. On rebellion, actual or threatened, duty of justice, before whom slave or free negro is bro't, &c.

Justice in such cases, to require sheriff to summon jury, &c.

Mode of proceeding.

Duty of solicitor in such cases.

If no counsel be employed for slave, court to assign.

Trials, where to be held.



Subpœnas,  
by whom to  
be issued &  
executed.

§ 15. It shall be the duty of the clerk of the circuit court or the committing magistrate, to issue all subpœnas or other legal process, as well for the prisoner as the state, which shall be executed by the sheriff or a constable, and for which they shall receive the fees now provided by law for similar services.

On conviction,  
sentence, how  
pronounced  
& executed.

§ 16. If any slave, or free person of color shall be found guilty under this act, it shall be the duty of the court to pronounce sentence, and to cause execution to be done in the manner prescribed by law for white persons; and not more than twenty, nor less than ten days, shall elapse between the time of passing sentence and such execution, unless delay become necessary on account of the situation of the convict, as provided for in the eighth chapter; and, on a conviction for conspiracy, insurrection or rebellion, the sentence may be executed forthwith.

For petit  
larceny, or  
lesser offence  
slave may  
be tried by  
justice of the  
peace.

§ 17. For the offence of petit larceny, or any offence of a lesser grade, any slave may be tried by any justice of the peace on warrant, and may be sentenced to receive any number of stripes not exceeding fifty, which sentence shall be executed by the constable; but no justice of the peace shall be authorized to inflict more than thirty-nine lashes, unless he associates with him at least two respectable slaveholders, who concur with him in the propriety of the sentence.

Offences of  
higher grade  
than petit  
larceny, not  
capitally  
punished,  
&c., tried by  
judge of  
county court  
& two jus-  
tices.

§ 18. All offences committed by a slave, of a higher grade than petit larceny, and not capitally punished, which may be committed by slaves, and which, if committed by a white person or a free negro, would, by the provisions of this code, be punished by imprisonment in the penitentiary, shall be tried by the judge of the county court and two justices of the peace, as provided for in this chapter; and the jury shall, by their verdict, direct the punishment to be inflicted, which shall not exceed thirty-nine lashes, or branding in the hand, or both, at their discretion.

[a 1843—(56)  
Sec. 23.]  
When slave  
is convicted  
of capital of-  
fence, same  
jury to assess  
his value,  
&c.

§ 19. "Whenever, on the trial of any slave for a capital offence, the jury shall return a verdict of guilty, the presiding judge shall have the same jury sworn to assess the value of said slave, and the verdict of said jury shall be entered on the record of the court, and the master or owner of such slave, producing to the comptroller of public accounts, a transcript from the record of the court, regularly certified by the clerk, and the certificate of the sheriff, that any slave has been executed in pursuance of the sentence of the court, shall be entitled to receive a warrant on the treasurer for one half the amount assessed by the jury, to be paid out of the fund hereinafter provided for that purpose.<sup>1</sup>

Owner to be  
paid.

Evidence  
that master  
is to blame  
for slave's  
offence to be  
introduced.  
When own-  
er shall re-  
ceive no com-  
pensation.

§ 20. It shall be the duty of the prosecuting officer, whenever he has just cause to believe that the master is to blame for the offence committed by the slave, to introduce testimony to establish the fact; and, if the jury so find, the master shall receive no compensation whatever; and when a slave is executed upon a charge of insurrection, or rebellion, the master shall not be entitled to receive from the state, any part of his value.

No free ne-  
gro, or per-  
son of color  
to come into  
this state, on  
board of any  
vessel.

§ 21. It shall not be lawful for any free negro or person of color to come into this state, on board of any vessel, as a cook, steward, mariner or in any other employment, on board of such vessel; and in case any vessel shall arrive in any port or harbor of this state, from any other state or foreign port, having on board any free negro or person of color employed on board such vessel as a cook, steward,

<sup>1</sup> For mode of raising the fund,—See "Taxes," § 22.



mariner or in any other employment, it shall be the duty of the harbor-master of the port or harbor, when such vessel may have arrived, forthwith to notify the sheriff of the county, in which such port or harbor is situated, of the arrival of such vessel, free negro or person of color; and it shall be the duty of the sheriff of the county, in which such port or harbor is situated, immediately on receiving notice from the harbor-master of the arrival of such vessel or vessels, to apprehend such free negro or person of color so arriving, contrary to this act, and to confine him, her or them, closely in jail, until such vessel shall be hauled off from the wharf, and be ready to proceed to sea; and when said vessel is ready to sail, the captain or other commander of said vessel shall be bound to carry away the said free negro or person of color, and pay the expenses of his, her or their arrest and detention; and in case such captain shall refuse or neglect to pay the said expenses, and carry away the said free negro or person of color, he shall be liable to indictment, and, on conviction, be fined, not exceeding one thousand dollars, and imprisoned, not exceeding six months, one or both, at the discretion of the jury trying the offence.

Duty of harbor-master in such cases

Duty of sheriff.

Captain of vessel to carry away such free negro, and pay expenses Penalty for refusal.

§ 22. Whenever any free negro or person of color shall be apprehended or committed to jail, as having arrived in any vessel as a cook, steward, mariner or otherwise, contrary to this act, it shall be the duty of the sheriff, during the confinement in jail of such free negro or person of color, to call upon some justice of the peace, to warn such free negro or person of color, never to enter this state after he or she shall have departed therefrom; and such justice of the peace shall, at the time of warning said free negro or person of color, insert his or her name in a book, to be provided by the sheriff for that purpose; and shall therein specify his or her age, complexion, occupation, height, or distinguishing marks, which entry shall be good and sufficient evidence of such warning; and every free negro or person of color, who shall not depart the state within twenty days after his release from confinement, in case of the captain refusing or neglecting to carry him or her away, being warned as aforesaid to depart, or, having departed, shall ever again enter within the limits of this state, by land or water, he or she shall, on conviction, be punished by imprisonment in the penitentiary, for two years; and if, on his liberation from the penitentiary, he or she does not depart from the state, within thirty days thereafter, he or she shall, on conviction, be imprisoned in the penitentiary, for the term of five years.

Such free negro to be warned never again to enter this state.

Name and description to be entered in a book.

Not departing or returning, how punished.

§ 23. It shall be the duty of the sheriff apprehending any free negro or person of color under the provisions of the preceding section, to demand of the captain of such vessel, or other person bringing such free negro or person of color into this state, a bond, with good and sufficient surety, in the sum of two thousand dollars, payable to the judge of the county court, and his successors in office, conditioned, that he will not depart this state, without taking with him such free negro or person of color, and paying all the expenses of apprehending, warning and confinement; and all prosecutions under this act may be maintained without limitation of time, and all penalties and forfeitures, imposed thereby, may be recovered in any court of record in this state, and the amount collected shall be paid by the sheriff collecting the same, to the county treasurer for county purposes.

Sheriff apprehending such free negro, to demand of captain of vessel his bond &c.

No limitation to prosecutions under this act.

§ 24. The fees, to be allowed and paid for the services required in the foregoing sections, shall be to the harbor-master two dollars, for

Fees allowed under this act.



giving notice of the arrest of each and every free negro or person of color, to the sheriff three dollars, for apprehending and committing, and fifty cents per day while in confinement; and to the justice of the peace for the duties required of him, two dollars; and to the solicitor, for each and every recovery under this act, the sum of twenty dollars.

Free negroes who have come into this state since Feb. 1st, 1832—how punished.

§ 25. Every free negro, who shall have come to this state since the first day of February, one thousand eight hundred and thirty-two, otherwise than as aforesaid, and shall have been admonished by any sheriff, justice of the peace, or other judicial officer, that he cannot remain in this state, and shall not, within thirty days thereafter, depart from the same, shall, on conviction, be punished by imprisonment in the penitentiary for two years, and shall have thirty days after his discharge from the penitentiary to leave the state, and, on failing to do so, shall, on conviction, be punished by imprisonment in the penitentiary for the term of five years.

To be admonished by sheriff, justices, &c. to depart from the state.

§ 26. It shall be, and is hereby made, the duty of all sheriffs, justices of the peace, and all other judicial officers, to give warning to and admonish all free negroes within their jurisdiction, who have come to this state since the first day of February, eighteen hundred and thirty-two, that they cannot, by law, remain within the same.

Duty of sheriffs to apprehend such free negroes.

§ 27. It shall be the duty of all sheriffs, to apprehend all free negroes who remain within this state, contrary to the provisions of the preceding sections, and cause them to be dealt with according to law.

1843—(54)  
Sec. 2.  
Slaves convicted of offences not capital, liable to be sold for costs.

§ 28. In all convictions of slaves of any offence not capital, said slaves shall be liable to be sold, within ten days after conviction, by the sheriff, for the costs of the prosecution, unless said costs shall be paid by the owners of said slaves.

## PENAL LAW.

### 1. FRAUDS.

1819—(11)  
Sec. 1.  
No person to take money for not bidding for lands.

§ 1. From and after the first day of January, one thousand eight hundred and twenty, it shall not be lawful for any person or persons, either directly or indirectly, or by any deceitful way or means whatsoever, to take or receive any money, or other thing of value from any person or persons, for not bidding for any of the public lands within this state.

Ib. Sec. 2.  
No person to bid off lands for another.

§ 2. If any person or persons shall bid off any of the public lands within this state, under an agreement previously entered into, to transfer the same, or any part thereof, for a premium or an advance to be paid therefor, and shall transfer the same, or any part thereof, in pursuance of such agreement, and shall take or receive any premium or reward, or other thing of value for so doing, he, she, or they shall be deemed guilty within the true intent and meaning of this act:

Provido—unless, &c.

*Provided, nevertheless,* This act shall not be construed so as to extend to any agreement or contract, which may be made without intent to violate or evade the provisions of this act, whereby any person or persons shall be employed and furnished with funds to purchase lands for others.



§ 3. All contracts, entered into for the payment of money, or for securing the payment thereof, or from which a benefit might accrue to the obligee or his assignee, for not bidding for any of the public lands within this state, or for giving a premium or reward for bidding off any of the public lands within this state, under a previous agreement to transfer the same, are hereby declared to be null and void, to all intents and purposes whatsoever.

*Ib. Sec. 3.*  
Contracts against this act, void.

§ 4. If any person or persons shall take or receive any money or other thing of value, directly or indirectly, or by any deceitful ways or means whatsoever, for the purpose of evading this act, for not bidding for any of the public lands within this state, or for bidding off any of the public lands within this state under an agreement previously entered into, to transfer the same, or any part thereof, as aforesaid, he, she, or they, so offending, shall forfeit and pay for every such offence, double the value of the money or other things so taken or received as aforesaid, to be recovered by action of debt, or on the case, one-half to the use of him or them that will sue for the same, and the other half to be paid into the public treasury, for the use of the state.

*Ib. Sec. 4.*  
Penalty for taking premium or money for bidding or not bidding.

§ 5. If any person or persons shall violate the provisions of this act, he, she, or they shall be liable to be indicted, and, upon conviction thereof, shall be fined in a sum not exceeding two thousand nor less than three hundred dollars, and be imprisoned for a term not less than three nor more than twelve months, at the discretion of the court before whom he, she, or they shall be tried.

*Ib. Sec. 5.*  
Violators of this act may be indicted.

§ 6. This shall be deemed a remedial statute, and shall receive a liberal construction; and the circuit court shall have exclusive jurisdiction of all offences against this act.

*Ib. Sec. 6.*  
This act remedial.

§ 7. It shall be the duty of the grand jurors in the several counties in this state, when they believe an offence has been committed against the provisions of this act, to apply to the court which they are summoned to attend, to issue a subpoena or subpoenas, returnable *instantly*, for witnesses to appear before them and give evidence in the same manner as witnesses now do, on bills of indictment, in such cases as it may be their duty to inquire into.

*Ib. Sec. 7.*  
Grand jurors may procure witnesses.

§ 8. Nothing contained in this act shall be so construed, as to prevent any person, who has made improvements on the United States lands, from having the right to sell his right to the same, and recover for such consideration.

*Ib. Sec. 8.*  
Improvements on U. S. land, may be sold.

§ 9. It shall be the duty of the judges of the several courts in this state, and justices of the peace, upon information by affidavit, to issue their warrant or warrants, to bring before them, or any other judge or justice having cognizance of the same, any person or persons who have violated any of the provisions of this act; and they are hereby directed and required, to bind any such offender or offenders to appear at the next circuit court to be holden for the county, in such sum as may be deemed proper, to answer the prosecution of the state, under such other regulations as are usual in criminal cases.

*Ib. Sec. 9.*  
Judges and justices may bind over offenders.

§ 10. The provisions of the above recited act,<sup>1</sup> shall be given in charge to the grand juries, by the judges at their respective circuit courts in this state.

1824—(1)  
*Sec. 3.*  
Judges to charge grand juries.

§ 11. In all cases whatsoever, where any suit or action shall be brought in any court of record in this state, touching or concerning any specialty, promise, or agreement, made in writing or otherwise,

*Ib. Sec. 4.*  
Party concerned may be witness in

<sup>1</sup> The preceding act.



civil suits arising under the foregoing law.

to pay money or any other thing, contrary to the provisions of the before-mentioned act, every person, who may be a party, or concerned in any way in the same, shall be a good and lawful witness to give evidence of the consideration and execution of any such bond, specialty, promise, or agreement as aforesaid: *Provided, however,* If any person, against whom such evidence is offered to be given, will deny upon oath, to be administered in open court, the truth of what such witness offers to swear, then, and in every such case, other and additional testimony shall be required.

*Ib. Sec. 5.*  
Witness, or party for-swearing himself, guilty of perjury.

§ 12. The circuit courts in this state shall have jurisdiction of all offences in violation of, and contrary to the provisions of the act that this is intended to amend; and if any witness or party, as aforesaid, shall forswear him or herself in any such matter, and be thereof lawfully convicted, he or she, so convicted, shall suffer the pains and penalties by law inflicted on persons convicted of willful and corrupt perjury.

## 2. FELONS AT LARGE AND FUGITIVES.

1818—(15)  
*Sec. 1.*  
Governor authorized to offer reward.

§ 13. The governor is hereby authorized, by proclamation, to offer a reward not exceeding four hundred dollars, for the apprehension of any person who may be charged with any capital offence, and may have escaped from prison, or the custody of a legal officer, or who may have eluded arrest by flight or otherwise.

*Ib. Sec. 2.*  
Draw on treasurer.

§ 14. The governor shall be authorized to draw on the state treasurer for any amount which may become due to any person or persons, in conformity to the provisions of this act.

1814—(15)  
*Sec. 1.*  
Fugitives from other states to be arrested and delivered up on demand of the executive thereof.

§ 15. When the executive authority of any of the United States or territories thereof, shall demand any person, as a fugitive from justice, of the executive authority of this state, and shall, moreover, produce a copy of an indictment found, or an affidavit made before a magistrate of any of the United States, or territories as aforesaid, charging the person so demanded with having committed treason, felony, or other crime, certified as authentic, by the governor or chief magistrate of the state or territory from which the person so charged fled; it shall be the duty of the executive authority of this state, to cause such person so demanded, if found within the state, to be arrested and secured, and notice of the arrest to be given to the executive making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear, upon the condition that said agent shall pay all legal costs which may accrue in apprehending and imprisoning such fugitive, and the said agent shall be empowered to transport him or her to the state or territory from which he or she shall have fled: *Provided,* That, if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged.

*Ib. Sec. 2.*  
Executive of this state empowered to demand fugitives.

§ 16. The executive authority of this state shall have power and authority to demand and receive any person, as a fugitive from justice, of the executive authority of any of the United States, or the territories thereof, to which such person shall have fled, in the same manner and under the same rules and regulations as prescribed by the foregoing section.

1807—(18)  
*Sec. 6.*  
Reward for apprehending criminals

§ 17. Whosoever shall apprehend and take one or more persons, guilty of burglary, or of stealing any horse or mule, or of robbing in any highway or road in this state, and shall prosecute him or them,



till he or they be convicted of any such offence, shall, for every such offender so convicted, receive, within one month after such conviction and demand thereof made, a warrant on the state treasury for the sum of fifty dollars, which demand shall be accompanied by a certificate to the comptroller of public accounts, from the court before whom such felon or felons shall be convicted. And in case any dispute should arise between the persons so apprehending any of the said thieves or robbers, touching their right to the said reward, then such court shall, by their said certificate, direct and appoint the said reward to be paid in such shares and proportions as to them shall seem just and reasonable.

§ 18. The person or persons, so apprehending any offender, shall be competent to give testimony on the trial of such offender. *Ib. Sec. 7. Testimony.*

§ 19. No informer or plaintiff, other than the party aggrieved, shall or may compound or agree with any person or persons, that shall offend, or that shall be surmised to offend any penal statute, for an offence committed, or pretended to be committed, but after answer made in court unto the information or suit, in that behalf exhibited or prosecuted; nor after answer, but by the order or consent of the court, in which the same information or suit shall be depending, on pain that whosoever shall offend in making composition, or other misdemeanor, contrary to the true intent and meaning of this provision, or shall, by color or pretence of process, or without process, upon color or pretence of any matter of offence against any penal law, make any composition, or take any money, reward or promise of reward, for himself or to the use of any other, without order or consent of the court aforesaid, and shall be thereof convicted, shall stand in the pillory for any time not exceeding six hours, and forever be disabled to pursue, or be plaintiff or informer in any suit or information, upon any statute popular or penal, and shall also forfeit and pay into the state treasury any sum not exceeding forty dollars. *Ib. Sec. 16. Penalty for composition with offender.*

### 3. INDICTMENTS, PRESENTMENTS AND ACTIONS POPULAR.

§ 20. If any person hereafter sue, with good faith, any action popular, and any defendant in the same action plead any manner of recovery by action popular, in bar of the said action, or that he before time barred any plaintiff in any action popular: then the plaintiff, in the action taken with good faith, may aver that the said recovery was had by collusion, or that the said plaintiff was barred by collusion: and if such collusion be lawfully found, the plaintiff, who shall sue with good faith, shall have recovery according to the nature of the action, and execution upon the same, in like manner and effect, as if no such action aforesaid had been had: *Provided, always,* That no plaintiff shall be permitted to aver any collusion in any action popular, where the point of the same action, or else the collusion, has been once tried or lawfully found with the plaintiff or against him, by trial of twelve men, and not otherwise. *Ib. Sec. 17. Collusion in actions popular.*

§ 21. Hereafter it shall be lawful to try offenders, by indictment, in all cases which are now required by law to be tried on presentment. *1820—(28) Sec. 11. Offenders to be tried on indictment.*

§ 22. Hereafter, in all cases of misdemeanor, where the grand jurors of this state are bound to present the offender or offenders, the said grand jurors shall not be bound to make presentment of any offender or offenders, on the knowledge of any one or more of their *1827—(24) Sec. 1. Grand jury vested with a discretion in presenting*



for misde-  
meanors.

Provido.

*Ib. Sec. 2.*  
Judge to  
charge juries  
accordingly.  
1807—(18)  
*Sec. 11.*  
Justice may  
issue search-  
warrant.

Concealer of  
stolen goods;  
how pun-  
ished.

1814—(17)  
*Sec. 31.*  
Pulling down  
advertisem-  
ent.

1821—(35)  
*Sec. 1.*  
Change of  
venue may  
be allowed  
at any time  
before trial,  
or after new  
trial granted.

1807—(6)  
*Sec. 54.*  
Recogni-  
zances, to  
whom pay-  
able.

body only, unless twelve of the number of any grand jury shall agree in opinion, that the public good requires that the offender or offenders should be prosecuted: *Provided*, That nothing herein shall prevent any individual from prosecuting and preferring a bill before any grand jury, as now allowed by law, in which cases grand juries shall be governed in their finding by the facts of the case, as heretofore.

§ 23. It shall be the duty of the judges of the circuit courts throughout the state to give this act in charge to the grand juries.

§ 24. It shall be lawful for any one justice of the peace, upon complaint made before him upon oath, that there is reason to suspect that stolen goods are knowingly concealed in any dwelling-house, out-house, garden, yard, croft, or other place or places, to issue a warrant under his hand, commanding every such dwelling-house or place to be searched in the day-time; and the person, knowingly concealing such stolen goods, or any part thereof, or in whose custody the same or any part thereof, shall be found, such person being privy thereto, shall be deemed guilty of a misdemeanor; and shall be brought before any justice of the peace for the county or place, and made amenable to answer for the same, by like warrant of any such justice, and, on conviction, shall be punished by fine and imprisonment, or whipping, as the court shall think fit to inflict, although the principal felon be not before convicted of the said felony, and whether such felon be amenable to justice or not.<sup>1</sup>

§ 25. If any person shall willfully pull down any advertisement which is required by law to be set up by any person or persons; he or she, so offending, shall forfeit for the first offence, five dollars, and for every like offence thereafter, ten dollars, to be recovered before any justice of the peace, by any person suing for the same, which fine, when collected, shall be paid into the county treasury for county purposes.

#### 4. CHANGE OF VENUE.

§ 26. It shall be lawful for the judges of the circuit courts, respectively, to grant to any person charged with a criminal offence, a change of venue, for sufficient cause shown at any time, either at the first trial term, or if the case should be continued, or a new trial had after conviction, at any subsequent term: *Provided*, That no change of venue shall be allowed more than once.<sup>2</sup>

#### 5. BAIL.

§ 27. All recognizances, taken for any breach of the peace, for the prosecution of offenders against the laws, or in any case whatsoever, where a recognizance may be necessary, shall be made payable to the governor, for the time being, and his successors in office.

<sup>1</sup> For the punishment of this offence—see “Penal Code,” chap. 4, § 60.

<sup>2</sup> In criminal prosecutions the right to a change of venue is confined to the party prosecuted, and shall be made to the nearest adjoining county which is free from the like exception.—See “Judicial Proceedings at Common Law—Venue,” § 166 and 170.



§ 28. All persons shall be bailable, unless for capital offences, 1807—(18)  
 where the proof shall be evident or the presumption great, by any Sec. 1.  
 justice of the peace, before whom the offender may be brought, be- What offences bailable, & by whom.  
 fore commitment, and by any one of the judges afterward.

## 6. SCIRE FACIAS.

§ 29. On bonds or recognizances forfeited, it shall be sufficient 1833—(13)  
 for the clerk to issue a notice, in the nature of a *scire facias*, reciting Sec. 1.  
 the bond or recognizance, and state that the same is forfeited, and What sufficient sci. fa. on forfeited bonds, &c.  
 that, unless he, she, or they appear at the next term of the court,  
 and show cause to the contrary, judgment will be entered against  
 him, her or them; and where judgment *nisi* has been entered against On judgments nisi.  
 any person, it shall be sufficient to recite the judgment *nisi* and the  
 term of the court at which it was rendered, and conclude by stating,  
 that, unless he, she, or they appear at the next term of the court  
 and show cause to the contrary, judgment final will be entered up;  
 which notice shall be held sufficient in law to entitle the state to a  
 recovery, though the citation be to no particular day of the term,  
 and although the notice does not specify the day or before whom  
 the judgment was rendered; nor shall any averment or statement  
 be necessary to the validity of the notice aforesaid, beyond the ex-  
 press terms of this act.

§ 30. In setting out a copy of the bond or recognizance, or judg- Ib. Sec. 2.  
 ment *nisi*, a variance shall not vitiate the proceedings unless it be a No variance fatal unless substantial.  
 substantial variance.

§ 31. Notices or *scire facias* shall be directed to the sheriff, and Ib. Sec. 3.  
 a copy shall be served on each by the sheriff; and one service on Sheriff to serve notice, and one service sufficient.  
 each defendant in said notice or *scire facias*, shall be sufficient to  
 enable the state to recover.

§ 32. All bonds or recognizances, entered into as aforesaid, may Ib. Sec. 4.  
 be made payable to the State of Alabama: *Provided, always,* That Bonds, &c. good, made either to the state or governor.  
 nothing in this section shall be so construed, as to prevent the proper  
 officer from making such bond payable to the governor and his suc-  
 cessors in office.

§ 33. The circuit courts are hereby authorized and required to Ib. Sec. 5.  
 determine upon all excuses, in criminal cases, for forfeitures under Circuit courts may excuse in cases of forfeiture, on payment of costs only.  
 this act; and to excuse the party in default, on such terms as the  
 court may impose, in no case extending beyond the payment of  
 costs, where the party is excused.

## 7. LIMITATION OF PROSECUTIONS.

§ 34. No person or persons shall be prosecuted for any fine or for- 1807—(6)  
 feiture under a penal statute, unless the prosecution for the same Sec. 49.  
 shall be instituted within twelve months from the time of incurring Limitation of one year to fines and forfeitures.  
 the fine or forfeiture aforesaid: *Provided,* That nothing, herein con-  
 tained, shall extend to any person or persons absconding or fleeing  
 from justice.

§ 35. No person or persons shall be indicted for any assault, or 1826—(21)  
 assault and battery, after the expiration of six months from the com- Sec. 3.  
 mission of the offence, unless he, she, or they, thus offending, shall Assaults, and assaults and bat-teries, within six months.  
 have been recognized, within that time, to appear at some court  
 having cognizance of said offence, except always such person or  
 persons as may have fled from justice.



## 8. COSTS AND RESTITUTION.

1807—(6)  
Sec. 51.  
Lands or  
goods of per-  
sons convict-  
ed, liable for  
costs and re-  
stitution.

§ 36. The lands, tenements, goods, and chattels, of any person or persons convicted of any crime or misdemeanor, shall be liable and subject, in preference to all other demands whatever, (except dower and jointure) in the first place, to the discharge of the expenses incurred by the state or county, in the prosecution and conviction of such offender; and, in the next place, to what restitution or reparation may be adjudged to the injured party; and if the estate of the person or persons shall be incompetent to the said purposes, then in that case, after deducting the expenses of prosecution and conviction as aforesaid, the surplus, if any, shall go towards making reparation to the party injured.

1811—(8)  
Sec. 1.  
In certain  
cases, prose-  
cutor to be  
taxed with  
the costs.  
[a1826—(21)  
Sec. 2.]

§ 37. It shall be the duty of the attorney-general, or solicitor, to mark on all bills of indictment, the name of the prosecutor; and if the state shall fail in the prosecution, it shall be the duty of the court, (either with or without a motion to that effect<sup>a</sup>) if the prosecution appear frivolous or malicious, to order the prosecutor to pay costs.

## 9. KILLING WITH BOWIE KNIFE, &amp;C.

1837—(8)  
Sec. 1.  
Person car-  
rying bowie  
knife, Ar-  
kansas tooth-  
pick, &c.  
kills another  
on sudden  
encounter—  
murder.

Every such  
weapon tax-  
ed \$100.

§ 38. If any person, carrying any knife or weapon, known as bowie knives or Arkansas tooth-picks, or either or any knife or weapon that shall, in form, shape or size, resemble a bowie knife, or Arkansas tooth-pick, on a sudden rencounter, shall cut or stab another with such knife, by reason of which he dies, it shall be adjudged murder, and the offender shall suffer the same as if the killing had been by malice aforethought.

§ 39. For every such weapon, sold or given, or otherwise disposed of in this state, the person selling, giving or disposing of the same, shall pay a tax of one hundred dollars, to be paid into the county treasury; and, if any person, so selling, giving or disposing of such weapon, shall fail to give in the same in his list of taxable property, he shall be subject to the pains and penalties of perjury.

## 10. DISINTERMENT, &amp;C.

1837—(9)  
Sec. 1.  
Disintering,  
or removing  
any human  
body, or the  
remains  
thereof, how  
punished.

Proviso.

§ 40. If any person shall willfully dig up, disinter, remove or convey away, any human body, or the remains thereof, or shall knowingly aid in such disinterment, removal or conveying away, every such offender, and every person accessory thereto, either before or after the fact, shall, upon conviction, be punished by imprisonment in the common jail of the county, not less than three nor more than twelve months, and fined not less than one nor more than five hundred dollars, and it shall be left to the direction of the jury trying the same, to inflict one or both of the said punishments on every such offender: *Provided, nevertheless*, That all sheriffs in this state, may surrender the dead bodies of such persons as shall be executed for capital crimes, to any regular physician, duly qualified, according to law, to be by him used for the advancement of anatomical science, unless the same be demanded by the kindred of such criminal, or some one of them.



§ 41. If any person shall, willfully or maliciously, destroy, mutilate, deface, injure or remove, any tomb, monument, grave-stone, or other structure or thing, placed or designed for a memorial of the dead, or any fence, railing, curb, or other thing, intended for the protection, or for the ornament of any tomb, monument, grave-stone, or other structure before mentioned, or of any enclosure for the burial of the dead, or shall willfully destroy, mutilate, remove, cut, break or injure, any tree, shrub or plant, placed or being within any such enclosure; the person so offending, upon conviction, shall be punished by fine, not less than one nor more than five hundred dollars, and by imprisonment in the county jail, not less than three nor more than twelve months: *Provided*, That nothing, herein contained, shall prevent any physician or student of medicine, from dissecting the body of a slave with the consent of the owner: *Provided*, That this act shall not be so construed as to prevent the examination of any dead subject, by the consent of the friends of the same, for the purpose of the advancement of medical science.

*Ib. Sec. 2.*  
Destroying,  
mutilating,  
defacing, &c.  
any tomb,  
monument,  
&c. designed  
as a memo-  
rial of the  
dead—how  
punished.

*Provido.*

## 11. REPORTS OF SUPREME COURT.

§ 42. If any person shall sell, in this state, any volume or volumes of the reports of the decisions hereafter to be published, excepting such as belong to the state, and under a contract with the proper officers of the state, he shall be subject to an indictment, and, on conviction, shall pay, for the use of the treasury of the state, the sum of twenty-five dollars for each volume so sold, and shall be imprisoned three months in the county jail, unless he sooner pays the whole amount of said fine and cost of suit.

1843—(27)  
*Sec. 3.*  
Penalty for  
selling re-  
ports of su-  
preme court  
without au-  
thority.

## 12. LOTTERIES.

§ 43. All the privileges and permissions heretofore granted by the legislature of this state, to raise and collect money by lottery, are hereby withdrawn and abolished.

1843—(38)  
*Sec. 1.*  
Lotteries  
prohibited.

§ 44. Any person, who shall keep and exhibit a lottery or other machine for the purpose of drawing any lottery, or shall advertise any scheme for the drawing a lottery, as manager, agent, or otherwise, shall, on conviction, be fined in a sum not less than one hundred nor more than five hundred dollars; and, on failure to pay the fine and cost, the defendant shall be committed to the jail of the proper county, there to remain until said fine and cost shall be paid in full.

*Ib. Sec. 2.*  
Penalty for  
keeping and  
exhibiting  
lottery or  
advertising  
scheme for  
one.

## 13. EMBEZZLEMENT.

§ 45. If any money, bank bills or merchandise, or any chattel or valuable security, shall be entrusted to any master or clerk of any steam-boat, or other water craft, banker, commission merchant, factor, broker, attorney or other agent, for safe custody or for any special purpose, without any authority to sell, negotiate, transfer or pledge the same, and he shall, in violation of good faith, and contrary to the object or purpose for which such money, bank bills, merchandise, chattel or valuable security, shall have been entrusted to him, embezzle, sell, negotiate, transfer, pledge, or, in any manner, con-

1837—(10)  
*Sec. 1.*  
Embezzling  
by master, or  
clerk of  
steam-boat,  
or other water  
craft, and  
other agents  
&c. how  
punished.



vert to his own use and benefit, such money, bank bills, merchandise, chattel or valuable security, or the proceeds of the same, or any part thereof, every such offender shall be held guilty of a misdemeanor, and, on conviction thereof, shall be fined by the jury trying the same, in any sum not exceeding one thousand dollars, nor less than two hundred and fifty dollars, and imprisoned for any term not less than three nor more than twelve months.

*Ib. Sec. 2.*  
Embezzling  
merchan-  
dise, or its  
proceeds, by  
commission  
merchant,  
factor, broker,  
attorney,  
or agent—  
how pun-  
ished.  
Proviso.

§ 46. If any merchandise or commodity shall be entrusted to any banker, commission merchant, factor, broker, attorney, or other agent with authority to sell the same, and he shall, contrary to good faith, embezzle, or, in any manner, convert to his own use, such merchandise or commodity, or the proceeds of the same, or any part thereof, every such offender, on conviction, shall be liable to the punishment prescribed in the first section of this act: *Provided, always*, That nothing, herein contained, shall affect any trustee in or under any instrument whatever, or any mortgage of any property, real or personal, in respect of any act done by such trustee or mortgagee, in relation to the property embraced in, or affected by, any such trust or mortgage; nor shall restrain any master or clerk of any steam-boat or other water craft, banker, commission merchant, factor, broker, attorney or other agent, from receiving any money, which shall be or become due and payable, upon, or by virtue of, any valuable security, according to the tenor and effect thereof, in such manner as he might have done, if this act had not been passed; nor from selling, transferring or otherwise disposing of any valuable security or effects in his possession, upon which he shall have any lien, claim or demand, entitling him by law so to do, unless such sale, transfer or other disposal shall extend to a greater number or part of such securities or effects than shall be sufficient for satisfying such lien, claim or demand.<sup>1</sup>

#### 14. MUSCLE SHOALS CANAL.

1839—(12)  
*Sec. 1.*  
Injury, or  
obstruction  
of the Mus-  
cle Shoals  
Canal.

How pun-  
ished.

§ 47. Every person, who shall wantonly open, or shut, or cause to be opened or shut, any lock-gate, or any puddle-gate, or culvert-gate of the Muscle Shoals Canal of the Tennessee river, or any water-gate thereof, or by any means prevent or attempt to prevent the free use of any such gates, and every person who shall wantonly cast or throw, or cause to be cast, thrown, or otherwise conveyed into the Muscle Shoals Canal any wood, logs, timber, brush or other material, with intention to obstruct or hinder the free navigation thereof, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined or imprisoned, or both, at the discretion of the jury trying the offence; the fine for each offence shall not exceed two hundred dollars, nor the imprisonment three months.

*Ib. Sec. 2.*  
Destroying  
lock, bank,  
aqueduct,  
culvert &c.  
how pun-  
ished.

§ 48. Every person, who shall willfully break, throw down, or destroy any lock, bank, water-weir, aqueduct, or culvert, in the Muscle Shoals Canal of the Tennessee river, shall, upon conviction of every such offence, be fined or imprisoned, or both, at the discretion of the jury trying the offence; the fine for each offence shall not exceed five hundred dollars, nor the imprisonment six months.

<sup>1</sup> See "Penal Code," chap. 4. § 32—also, "Judicial Proceedings at Common Law—Venue."



15. DUELING.<sup>1</sup>

§ 49. If any judge of the circuit court, or judge of the county court, or justice of the peace within this state, have just or probable grounds of suspicion, that any person or persons are about to be engaged in a duel, they, or either of them, shall by this act have power, and be compelled, to issue a warrant to any constable, sheriff, or, in the absence of these officers, to any person who is not a qualified peace-officer, to take the body or bodies of all whom he may suspect to be concerned, either as principals, seconds, counselors, aiders, or abettors, and have them brought before him: and if, after such examination as the judge or justice may think proper, it should appear there are just grounds for believing that a duel is intended, it shall be the duty of such judge or justice to bind the parties suspected, in a recognizance, in such sum as he may deem requisite, with sufficient securities, to appear at the next county or circuit court, as well as bind them to keep the peace until the rising of the court to which they are bound to appear.

§ 50. The foreman of the grand jury, or any member thereof, in their retirement, shall have power, under the authority of the court then sitting, to send for any person or persons, who, on oath, shall give the grand jury such information as they may possess, relating to, or touching the violation of this law; and it shall be the duty of the grand jury to make presentments to the court of all such as may be violators, who shall be tried and dealt with as the existing laws may direct.

§ 51. If any justice, or other officer, bound to preserve the public peace, shall have knowledge of an intention to fight with any deadly weapons, given or received, and not use or exert his official authority to arrest the parties, and prevent the duel, such justice or other officer shall, for such neglect of duty, be indicted, and, on conviction, be dismissed from office.

§ 52. If any person or persons shall, in any newspaper or handbills, written or printed, publish or proclaim any other person or persons as a coward, or use any opprobrious or abusive language for not accepting a challenge, or fighting a duel; such person or persons, so offending, shall, on conviction, be sentenced to pay a fine not exceeding five hundred dollars, as the court may order and direct.

§ 53. The publisher or printer of any newspaper, handbill, or other publication, shall, in all prosecutions under the last mentioned section, be summoned as a witness, and be accepted by the court as a witness, against the writer or writers of such publication or handbill; and if the said printer or printers, when summoned before the court, shall refuse to give up the writer's name or names, the court shall consider him or them as guilty of flagrant contempt, and shall proceed to punish him or them, in an exemplary manner.

§ 54. All members of the general assembly, hereafter to be elected, and all officers and public functionaries hereafter elected or appointed, under the authority of the constitution and laws of this state, shall, before they enter upon the discharge of the duties of their stations or offices, either civil, military, or otherwise, take and

1819—(13)  
Sec. 2.  
Judges, justices, &c. required to apprehend persons about to fight a duel, and bind them over.

*Ib.* Sec. 7.  
Grand jury empowered to send for persons.

*Ib.* Sec. 8.  
Justices, &c. liable to indictment for not preventing duel.

*Ib.* Sec. 9.  
No person allowed to publish another as a coward.

*Ib.* Sec. 10.  
Printer's liability.

1896—(7)  
Sec. 1.  
All public officers to take an oath against dueling.

<sup>1</sup>For the punishment of dueling, challenging or accepting a challenge—See "Penal Code," chap. 3, § 10, 11, 12.



Form of  
oath.

subscribe one of the following oaths, as the case may be, (in addition to the oath prescribed by the constitution,) before any judge of the circuit or county court, or any justice of the peace, who shall deliver such oath to the clerk of the circuit court for safe keeping. "I, \_\_\_\_\_ do solemnly swear, (or affirm, as the case may be,) that I have, neither directly nor indirectly, given, accepted, or knowingly carried, a challenge in writing, or otherwise, to any person or persons (being a citizen of this state,) to fight in single combat or otherwise, with any deadly weapon, either in or out of this state, or aided or abetted in the same, since the first day of January, one thousand eight hundred and twenty-six; and that I will, neither directly nor indirectly, give, accept, or knowingly carry a challenge, in any manner whatsoever, to any person or persons, (being a citizen of this state,) to fight in single combat or otherwise, with any deadly weapon, in or out of the state, or, in any manner whatsoever, aid or abet the same, during the time for which I am elected, or during my continuance in office, or during my continuance in the discharge of any public function." "And upon his or their refusing to take the oath aforesaid, his or their seat, if a member of the general assembly, or his or their office, or public function, or appointment, shall be vacated, and shall be filled in the same manner as if he or they had resigned.

[s 1819—(13)  
Sec. 4.]  
Consequence  
of refusing to  
take the  
oath.

Ib. Sec. 2.  
Form of oath  
for such as  
emigrate to  
the state af-  
ter January  
1, 1826.

§ 55. Any person or persons, who has or have emigrated to this state since the first day of January, one thousand eight hundred and twenty-six, or may hereafter become a citizen of this state, shall, before he enters upon the discharge of any public function, take and subscribe the following oath: "I, \_\_\_\_\_ do solemnly swear (or affirm, as the case may be,) that I have, neither directly nor indirectly, given, accepted, or knowingly carried, a challenge, in writing or otherwise, to any person or persons, (being a citizen or citizens of this state,) to fight in single combat or otherwise, with any deadly weapon, either in or out of this state, or aided or abetted in the same, since I have been a citizen thereof; and that I will neither directly nor indirectly, give, accept, or knowingly carry, a challenge in any manner whatsoever, to any person or persons, (being a citizen or citizens of this state,) to fight in single combat or otherwise, with any deadly weapon, in or out of this state, or, in any manner whatsoever, aid or abet the same during the time for which I am elected, or during my continuance in office, or during my continuance in the discharge of any public function."<sup>1</sup>

<sup>1</sup> This act was passed *verbatim*, December 6, 1821, except that it required the oath against dueling to be retrospective as far as the first of January, 1821, with a corresponding variation in the case of emigrants. An act passed December 24, 1823, empowers those persons who had taken an oath under the act of 1819, to release themselves from it, by taking and subscribing the oath prescribed in the act of December 6, 1821. All these acts are covered by the repealing clause of the act of January, 1826—and are now no further in force, than as interpreters of the rights and liabilities of such as conformed to their provisions, while unrepealed.



## PHYSICIANS.

§ 1. No person shall be allowed to practice physic, or surgery, or any branch thereof, or in any case to prescribe for the cure of diseases for fee or reward, unless he shall have first been licensed to do so, in the manner hereinafter prescribed. 1823—(19)  
Physicians  
to be licens-  
ed.

§ 2. All bonds, notes, promises, and assumpsits made to any person or persons not licensed in manner hereinafter mentioned, the consideration of which shall be for services rendered as a physician or surgeon, in prescribing for the cure of diseases, shall be utterly void and of no effect. Bonds, &c.,  
taken by  
physicians  
not licensed,  
void.

§ 3. In order to the proper regulation of the practice of physic and surgery, there shall be established *five* boards of physicians; one at Huntsville, one at Tuscaloosa, one at Selma, one at Claiborne, and one at the city of Mobile; to consist of *five* members each, to be elected by joint vote of both houses of the general assembly; which boards shall meet annually, for the purpose of examining all applicants for a license to practice medicine; and if, on such examination, they are found competent, shall grant such applicants a license to practice physic and surgery: *Provided*, That two members of either of the said boards shall constitute a quorum to make such examination, and to grant such license; *And provided, also*, That any one of the members of either of the medical boards shall be authorized, during the recess of the annual meetings, to examine any applicants, and if, on examination, deemed competent to practice medicine and surgery, shall grant them permission to practice until the next annual meeting of the board, of which the physician granting such permission is a member, to whom said applicant shall apply for a license to practice medicine and surgery, and, if refused, shall not be again permitted to practice, except by a license from one of the boards: *Provided, however*, That no member of the legislature shall be elected a member of the medical board, during the term for which he was elected a member of the legislature. Medical  
boards estab-  
lished.  
[1830—(9)  
Sec. 1.  
1831—(4)  
Sec. 1.]  
To meet an-  
nually for  
granting li-  
censes.  
Quorum.  
Temporary  
permits.  
Members of  
legislature  
ineligible.

§ 4. The meetings of the said boards, respectively, shall be held on the first Monday in December, annually: and the said boards shall be entitled to demand and receive of every applicant, the sum of five dollars for each examination, five dollars for every license or diploma, and five dollars for granting permits during the recess of their regular meetings; to be appropriated in any manner that a majority of the medical board may think proper. Fees.  
[1828—(42)  
Sec. 3.  
1830—(9)  
Sec. 23.]  
How appro-  
priated.

§ 5. The said medical boards may elect all such officers, and frame all such by-laws as may be necessary to carry this act into effect; and when any vacancy may happen in any of the boards by death or otherwise, a quorum may fill the vacancy until the meeting of the next general assembly, when such vacancy shall be filled by a joint vote of both houses. Officers and  
by-laws.  
[a 1828—(42)  
Sec. 5.]  
Vacancies.

§ 6. If any of the members, by this act appointed to constitute the board of physicians to meet at the several places hereinbefore appointed, shall fail to attend the meetings of the said boards of physicians for two successive annual meetings of the same, he shall be no longer considered a member thereof; and it shall be the duty of the presiding member, at each meeting of the said boards, to note the defaulters at such meeting: *Provided, however*, That this act shall not be so construed as to prevent either of the medical boards hereinbefore appointed, from granting a license to any person or persons to practice medicine or surgery alone. Members ab-  
sent at two  
annual meet-  
ings, seat va-  
cated.  
Licenses  
may be grant-  
ed, in medi-  
cine or sur-  
gery alone



This law not to affect physicians already in practice. Penalty for violating this act, 500 dollars.

Proviso.

Members of board to be sworn.

1826—(19)  
Sec. 1.  
Graduated physicians & surgeons may be enrolled without examination.  
1832—(28)  
Sec. 1.  
Thompsonian system licensed.

Proviso.

1835—(19)  
Sec. 1.  
Board at Montgomery.  
Ib. Sec. 2.  
How appointed and regulated.  
Ib. Sec. 3.  
Board at Demopolis.

1837—(17)  
Sec. 1.  
Medical board at Irwinton.

§ 7. This act shall not be so construed as to include or operate upon any person, who may have been engaged in the practice of medicine or surgery in this state, previous to its passage.

§ 8. Any person, who shall violate any of the provisions of this act, shall forfeit and pay the sum of five hundred dollars, to be recovered in an action of debt, in any court of record in this state, by any person who may sue for the same; one-half thereof to be paid to the said informer, and the other half to be paid into the treasury of the county in which such suit may be tried: *Provided*, That nothing, contained in the foregoing act, shall be so construed, as to prevent persons from practicing as doctors of medicine, who may have received a diploma from any regularly constituted medical institution within the United States; *And provided, further*, That such person shall have been engaged in the practice of medicine within two years previous: *Provided, further*, That the said board shall, before they enter on the duties of their appointment, take and subscribe an oath before some justice of the peace, to discharge the duties imposed on them by this act, without favor, partiality, or prejudice.

§ 9. Any physician or surgeon who may have graduated at any regular medical university, shall be allowed to enrol his name with any of the medical boards of this state, on producing his diploma, without examination.

§ 10. The second and eighth sections of an act to regulate the licensing of physicians to practice, and for other purposes therein named, passed 22d December, A. D. 1823, are hereby so far repealed, that neither of the aforesaid sections shall be so construed as to prevent any person or persons from practicing medicine on the Botanical system of Doctor Samuel Thompson, and recovering reasonable compensation for the same: *Provided*, That if the said persons, practicing on the Thompsonian or Botanical system, shall bleed, apply a blister of Spanish flies, administer calomel or any of the mercurial preparations, antimony, arsenic, tartar emetic, opium, or laudanum, they shall be liable to the penalties of the act to regulate the licensing of physicians to practice, and for other purposes therein named, approved 22d December, 1823.

§ 11. There shall be a board of physicians established in the town of Montgomery.

§ 12. The said board of physicians shall be appointed, guided and regulated, in all respects, by the provisions of an act, entitled "An Act to amend an act to regulate the licensing of physicians to practice, and for other purposes therein named," passed January 15, 1830.

§ 13. There shall be a medical board established at the town of Demopolis, in the county of Marengo, under the laws and restrictions establishing medical boards of this state.

§ 14. In addition to the medical boards now established by law, there shall be one established at the town of Irwinton,<sup>1</sup> to consist of five members, to be elected by joint ballot of both branches of the general assembly, which board shall meet annually, for the purpose of examining all applicants for a license to practice medicine, and said board, when elected, shall be governed by the same rules, laws and regulations, in every respect whatever, as those now prescribed for the government of the other medical boards of this state.

<sup>1</sup> By an act of the general assembly at the session of 1842-3, the name of this town was changed to Eufaula.



§ 15. William Williamson, James G. Francis, Atkinson Pelham, 1841—(28)  
G. R. Grant, and J. C. Clarke are hereby constituted a board of phy-  
sicians for the town of Jacksonville, in the county of Benton, to be  
styled "The Medical Board of Physicians for the town of Jackson-  
ville."

Sec. 1.  
Board of  
physicians at  
Jacksonville

§ 16. A majority of said board shall have power to fill all vacan-  
cies, whenever they may happen by death, resignation, or other-  
wise.

Ib. Sec. 2.  
Vacancies,  
how filled.

§ 17. Said board are hereby constituted the medical board of  
Jacksonville, and it shall be their duty to examine the applicants for  
permission to practice medicine, to grant license, and do all other  
business required of said board by law.

Ib. Sec. 3.  
Said board  
to examine  
and license  
applicants.

§ 18. Said board shall have power to adopt a constitution and pass  
such by-laws, under the provisions of said act, as they may deem nec-  
essary for their government: *Provided*, Such by-laws do not con-  
flict with the constitution of this state or the constitution of the  
United States.

Ib. Sec. 4.  
May adopt a  
constitution  
and by-laws.

§ 19. Said board are hereby required to procure and keep an offi-  
cial seal, with such device as they may deem necessary, and they are  
hereby declared able and capable in law or equity to receive and  
hold, have and enjoy, donations of real or personal property, not ex-  
ceeding ten thousand dollars, to and for the use of said board, and  
they may receive and hold the same, by gift, grant, bequest or pur-  
chase, either in fee simple or otherwise; sue and be sued, plead and  
be impleaded, and do and perform any other acts incident to bodies  
corporate.

Ib. Sec. 5.  
Required to  
keep an offi-  
cial seal.

May receive  
donations,  
&c.

§ 20. Nothing, herein contained, shall authorize said corporation  
to exercise banking privileges.

Ib. Sec. 6.  
Not to exer-  
cise banking  
privileges.

§ 21. There shall be a board of physicians established at the town  
of Florence.

1841—(29)  
Sec. 1.

§ 22. The said board of physicians shall be appointed, guided and  
regulated in all respects, by the provisions of "An Act, to amend an  
act, to regulate the licensing of physicians to practice, and for other  
purposes therein named," passed January 15th, 1830.

Board at  
Florence.

Ib. Sec. 2.  
How ap-  
pointed and  
regulated.

§ 23. The Alabama Medical Society is hereby declared a body  
corporate and politic, by the name and style of "The Alabama Med-  
ical Society," and, under this name, shall have perpetual succession  
of officers, sue and be sued, plead and be impleaded, and have a com-  
mon seal, with power to change or alter the same at pleasure.

1841—(30)  
Sec. 1.

Alabama  
Medical So-  
ciety, a body  
corporate.

§ 24. Said society is hereby empowered, to adopt a constitution  
and pass such by-laws, as may be deemed necessary for its good gov-  
ernment, the same not being repugnant to the constitution and laws  
of this state, nor of the United States.

Ib. Sec. 2.  
May adopt a  
constitution  
and by-laws.

§ 25. Said society is hereby authorized and empowered, to hold  
by purchase, gift, grant, or otherwise, property, real, personal and  
mixed, not exceeding in value sixty thousand dollars, and to sell and  
dispose of the same at pleasure.

Ib. Sec. 3.  
May hold  
property,  
real and per-  
sonal.

§ 26. The powers and privileges of the medical board of the town  
of Selma are hereby transferred to, and vested in, said society; and  
said society shall have the right to grant diplomas and exercise such  
other powers, as are incident to institutions incorporated for the pro-  
motion of medical science: *Provided*, That, in no case, shall said  
society exercise banking privileges.

Ib. Sec. 4.  
Powers and  
privileges of  
board at Sel-  
ma transferr-  
ed to said  
society.  
Provido.

§ 27. The members of this society shall be known and styled  
"Fellows of the Alabama Medical Society."

Ib. Sec. 5.  
Name of the  
society.

§ 28. Solomon Mordecai, John H. Woodcock, Henry S. Levert,  
Josiah C. Nott, and their associates and successors of the Mobile

1841—(31)  
Sec. 1.  
Mobile medi-



cal society  
incorpora-  
ted.  
Corporate  
powers.

May adopt  
constitution  
and by-laws.

medical society of the city of Mobile, are hereby constituted a body corporate, under the name and style of "The Mobile Medical Society," and, by that name and style, may sue and be sued, plead and be impleaded, have, hold, possess, enjoy, sell and purchase lands, tenements, goods and chattels; and may adopt such a constitution and by-laws for the government of the said society, as may not conflict with this act, or with the constitution and laws of the state of Alabama.

*Ib. Sec. 2.*  
To appoint  
five mem-  
bers annual-  
ly, to exam-  
ine and li-  
cense appli-  
cants.

*Ib. Sec. 3.*  
To keep a  
record of all  
licenses, &c.

§ 29. The said corporation shall appoint, annually, five members of the said society, to examine all applicants for license to practice medicine in the county of Mobile, and who shall perform the same duties that are required by the existing laws of the medical boards in this state, and shall have the same powers.

*Ib. Sec. 4.*  
Any licensed  
physician of  
Mobile may  
be a mem-  
ber—on  
what terms.

§ 30. The said corporation shall keep a record book, in which shall be entered copies of all the licenses that shall be issued by the said board; and no person shall be permitted to practice medicine for fee or reward, or to receive compensation for attending as a physician in the county of Mobile, unless a license shall have been granted by the said medical board to such person, and upon such evidence of qualification as, in the judgment of said board, shall entitle him to such license.

*Ib. Sec. 5.*  
A physician,  
licensed by  
any board,  
may record  
his license,  
or diploma,  
&c.

§ 31. Any licensed physician in the county of Mobile shall be entitled to admission into the said medical society, upon complying with the constitution and by-laws prescribing the terms of admission, unless two-thirds of the whole society shall object to such admission.

*Ib. Sec. 6.*  
Duties of  
Mobile medi-  
cal society.

§ 32. All physicians, who have been licensed heretofore, or who shall hereafter be licensed, by any medical board, to practice medicine in this state, and who shall come to reside in the county of Mobile, may, within six months from the passage of this act, or from the time of their settlement in said county, cause to be recorded in the record book of said society, the license or diploma under which their said profession is pursued; and, if any physician shall fail to do so, he shall not be permitted to recover for any services as a physician, that he may render after the passage of this act, until he shall have complied with this section of this act.

*Ib. Sec. 7.*  
This act in  
force ten  
years.

*Ib. Sec. 8.*  
Repealing  
clause.  
Proviso.

§ 33. The said society shall be required to carry into effect, such ordinances as the corporation of the city of Mobile may adopt in regard to it, to organize a board of health, and procure necessary information and advice upon the subject of the health of the city, and the precautionary measures necessary to preserve the same.

1837—(18)  
Sec. 1.  
Medical  
boards to  
keep official  
seal.

*Ib. Sec. 2.*  
Shall affix  
seal to all  
licenses—  
and licenses  
to be evi-  
dence with-  
out other  
proof.

§ 34. This act shall remain in force ten years from its passage, and may be altered, modified or repealed during that time.

§ 35. All laws and parts of laws, conflicting with the provisions of this act, are hereby repealed, so far as they conflict with the same: *Provided, however,* This act shall, in no wise, affect or alter the rights of those who may choose to practice the botanical system under the restrictions now prescribed by law.

§ 36. The several medical boards in this state, are hereby required to procure and keep an official seal for their respective boards, with such device as they may deem suitable.

§ 37. The said medical boards shall affix their official seal to all licenses or permits, which they may grant, and any license or permit, having said seal, shall be received in evidence in any of the courts of this state, without further proof of their authentication.



§ 38. It shall be the duty of each of the medical boards of this state, to examine and license applicants to practice dental surgery, under the same rules and regulations, and subject to the same restrictions, as those who apply for license to practice medicine; and, in order more fully to carry this act into effect, it shall be the duty of each of the medical boards, where the same is practicable, to add to their body, by election, a professional dentist, having the requisite qualifications; which dentist, so added, shall constitute a part of the board.

§ 39. If any person styling himself a dentist, or other person, shall engage in the practice of dental surgery as a professional business, without having been regularly licensed so to do by one of the medical boards of this state, as hereinbefore provided, for every such offence he shall forfeit and pay a sum not exceeding fifty dollars, recoverable before any court having jurisdiction of the same, one half to the informer, the other half to the county where suit is brought.

§ 40. All bonds, notes or promissory obligations, or assumpsits, made to any person or persons not authorized as provided for in this act, the consideration of which shall be for services rendered as a professional dentist, or in the line of professional dentistry, shall be utterly void and of no effect: *Provided*, The provisions of this act shall not be so construed as to prevent persons from practicing dental surgery, who have a license to practice surgery and medicine, from either of the medical boards of this state, or a diploma from any regularly constituted medical institution in the United States.

§ 41. It shall be the duty of all practicing physicians, surgeons and dentists, to have their licenses recorded in the office of the clerk of the county court in which they may reside, and the certificate of the clerk shall be considered as good evidence in any court, of the right of any individual, having a diploma or license to practice his profession, and recover his debts for the same.

§ 42. In all actions now pending or hereafter to be commenced by any licensed or graduated physician, to recover for professional services, such physician shall not be required to produce any evidence of his license or graduation, on the trial of such action, unless required by notice, served two days before such trial, that such proof will be required, in which case it shall only be necessary for such physician to produce a diploma or license, from some legally constituted board of physicians in this state, which said diploma or license shall be taken as *prima facie* evidence of the right of such physician to practice medicine in this state.

§ 43. If, on the trial of any such cause, the plaintiff shall produce, or offer to produce, for the purpose of using as evidence, any forged diploma or license, or a genuine one granted to any other person than the one so offering to use it as evidence, he shall be subject to all the pains and penalties now provided by law for the crime of forgery.

1841—(32)  
Sec. 1.  
Medical boards to examine and license dental surgeons.

Ib. Sec. 2.  
Penalty for practicing dental surgery without such license.

Ib. Sec. 3.  
All contracts to pay a dental surgeon, not licensed, void.  
Proviso.

Ib. Sec. 4.  
Physicians, surgeons and dentists to have their licenses recorded in county clerk's office.

1843—(43)  
Sec. 1.  
In actions for services, physicians not required to produce evidence of license, unless, &c.

Ib. Sec. 2.  
Penalty for producing forged diploma as evidence.

§ 1. It shall be the duty of the judges of the county courts, in their respective counties, annually to appoint one or more overseers of the poor in each captain's beat, to serve for the term of one year,

1807—(23)  
Overseers of poor to be appointed



annually in  
each cap-  
tain's beat,  
by county  
court.  
[a 1838—(48)  
Sec. 1.]

Who exempt  
from serving

Overseer  
required to  
take oath

Overseer's  
duties.

To make  
entries of all  
expenses,

and render  
account  
twice a year.  
Accounts to  
be paid out  
of county  
treasury.

Poor persons  
refused re-  
lief, may ap-  
ply to county  
court.

Poor persons  
leaving their  
proper dis-  
tricts, or  
counties,  
how dealt  
with.

or until another overseer shall be appointed, and the judge and commissioners may fill vacancies in the office of overseers of the poor as often as they may occur; and any person, so appointed, who shall refuse or neglect to serve as overseer of the poor, unless disqualified by age or infirmity, of which the judge and commissioners shall judge, shall forfeit and pay fifty dollars, to be recovered with costs, by action of debt in any court having competent jurisdiction, for the use of the county. *Provided*, That no person, holding any office or employment under the government, shall be compelled to serve as overseer of the poor, so long as he holds the same. In case of the refusal or inability of any person to serve as overseer of the poor, it shall be lawful for the judge and commissioners of the county court to appoint a new overseer of the poor for the remainder of the year, in room of the said person unable or refusing to serve; which new overseer shall be subject to the same duties and penalties which were obligatory upon the person appointed overseer by the county court: and every overseer, so nominated and appointed, shall, immediately after his nomination, take an oath or affirmation before any judge or justice, that he will discharge the duties of overseer of the poor, truly, faithfully, and impartially, to the best of his knowledge and ability.

§ 2. It shall be the duty of the overseers of the poor, each in his respective district, to provide for the indigent, lame, blind and others, not able to maintain themselves; and may also provide houses, nurses, and physicians, in such cases as they shall think necessary; the expenses of which shall be provided for in the annual county levy; and it shall be lawful for the overseers of the poor to contract with any person or persons, for keeping, maintaining, and employing, any or all such poor persons, and take the benefit of their work, labor, or service, towards their maintenance and support. If any poor person shall refuse to be lodged, kept, maintained, and employed, in such manner as the overseers shall direct, he or she shall be struck off from the overseer's list, and shall not be entitled to receive relief from the overseers during such refusal. The said overseers shall make fair entries in a book, of the names of all the poor within their respective districts, with the time when each of them became chargeable, together with the amount of all charges, costs and expenses, incurred under the direction of the said overseers; which books and accounts they shall be obliged to present twice in every year, for the inspection of the judge of the county court. And if the said judge shall approve the accounts of any such overseers, he shall issue a certificate to that effect, directing the county treasurer to pay the amount thereof to such person or persons to whom the same may be lawfully due.

§ 3. If any poor person shall suppose that he or she is entitled to the benefit of the laws for the relief of the poor, which may have been refused by the overseer, such person may apply to the county court, or during the recess, to the judge, who is authorized, if he shall think proper, to direct the overseer to receive him or her upon the list of the poor, which overseer is bound to yield obedience to the directions of the said court or judge.

§ 4. The overseers shall take measures to prevent the poor from strolling from one district into another, and may make complaint before any justice that any poor person is come into their county, and is likely to become chargeable thereto; whereupon, it shall be lawful for such justice, by warrant under his hand, to cause such poor person to be removed to the county where he or she was



last settled: *Provided*, That such poor person hath not been resident for six months last past in the county from which it is proposed to remove him or her. But if such poor person be sick or disabled, and cannot be removed without danger of life, the overseer shall provide for his or her maintenance and cure, at the charge of his or her county, and, after recovery, shall cause him or her to be removed; and the county, wherein he or she was legally settled, shall repay all charges occasioned by the sickness, maintenance, and cure of such poor person, and for removing him or her; and also all charges or expenses, if such person shall die before removal: and it shall be the duty of the overseer of the district to which the person belongs, to receive and provide for the person or persons so removed; and, in case of refusal, the said person or persons may apply to the judge of the county court for relief, as hereinbefore directed. The overseer, who shall have made the disbursement, being furnished with a certificate of the said expenditure by the judge of the county court of his proper county, shall apply to the judge of the county court to which the said poor person or persons shall belong; which said judge, last mentioned, is hereby directed to draw an order on the treasurer of his proper county for the re-imbursement of the said expenses.

§ 5. Where any dispute shall arise respecting the residence of any poor person, the court of any county adjacent, and not interested, is authorized to take cognizance thereof, and determine the same. Disputed residences, how tried.

§ 6. The overseers of the poor shall make returns to the orphans' courts, twice a year, of the poor orphans in their districts, and of such children within the same, whose parents they shall judge incapable of supporting them, and bringing them up in honest ways. The said courts are hereby authorized to direct the said overseers, or either of them, to bind out such poor orphans and children, apprentices to such person or persons whom the court shall appoint, until the age of *twenty-one* years, if a male; or sixteen years, if a female. [a 1809—(5) Sec. 1.] The person, to whom such apprentice shall be bound, shall engage by a covenant, to be entered in the indenture, to provide the apprentice with a sufficiency of good and wholesome provisions, necessary clothing, washing, and lodging; to teach the said apprentice the business or occupation which he pursues for a livelihood, and also to read, write, and to cipher as far as the rule of three; and, at the expiration of said apprenticeship, to furnish the said apprentice with two complete new suits of clothing. It shall be lawful for the said court, upon the complaint of the overseers of the poor, or of any apprentice, by themselves or friends, against their masters or mistresses, to hear and determine; and, if it shall appear to the satisfaction of the court, that such complaint be well founded, and of sufficient magnitude to make a removal necessary, the court shall have power to remove such apprentice, and bind him or her to such other person as they shall think proper. County court, for sufficient cause, may remove apprentice, and bind to another.

§ 7. The father and grandfather, the mother and grandmother, and the descendants of any poor, old, blind, lame, and impotent person, or other person not able to work, being of sufficient ability, shall, at their own charge, relieve and maintain every such poor person as the judge shall direct at the next county court, in their respective counties, or the corporation courts in their respective towns, on pain of forfeiting eight dollars for each month they shall fail therein. Id. Sec. 8. Who to maintain their poor relations.



*Ib.* Sec. 9.  
Penalty for  
bringing any  
infant, lunatic,  
&c., into  
the state.

§ 8. If any person, commanding a ship, vessel, or boat, shall import into this state, or bring to the shores thereof, any infant, lunatic, maimed, aged, infirm person, or vagrant, who may be adjudged likely to become chargeable to the state, it shall be lawful for any judge of the county court, or for any magistrate of a corporation court, to compel such person commanding such vessel to give sufficient security to indemnify the inhabitants of this state from any charge that may come or be brought upon them, by such infant, lunatic, maimed, aged, infirm, or vagrant person, coming into or living within this state, or, otherwise, to transport such person beyond the limits of this state.

1807—(18)  
Sec. 14.  
Children of  
criminals in  
certain cases  
to be bound  
out.

§ 9. Whenever, on any criminal prosecution, it shall appear to the satisfaction of the court, that there can be no reasonable expectation, that the family of the prisoner will be brought up in honest courses, it shall be the duty of such court to certify the same to the overseers of the poor for the beat in which such family may reside, provided the same be within the limits of the jurisdiction of such court; and the said overseers shall thereupon bind out the children of such person, to honest, respectable, and virtuous citizens, for the same periods of time, and under the same conditions for their instruction and maintenance, as in other cases of orphans and poor children, and return the indentures to the next county court, and likewise certify to the said superior court, their doings therein.

1807—(34)  
Preamble.

Whereas, it is intended that impartial justice should be had and administered to all the citizens of this state, as well to the poor as to the rich: And whereas, poor citizens are not of ability or power to sue according to the laws of this land, for redress of injuries and wrongs to them done, as well concerning their persons and inheritance as other causes:—For remedy thereof, in behalf of poor persons of this land, not able to sue for their relief after the course of the law:

Sec. 1.  
Poor persons  
to be allowed  
writs, counsel,  
&c., free of  
charge.

§ 10. *Be it enacted, &c.* That every poor person, who shall have cause of action against any person within this state, shall have, by the discretion of the court, before whom he would sue, writ or writs original, and writs of subpœna, according to the nature of his cause, nothing paying for the same; and the said court shall direct the clerk to issue the necessary process; shall assign to him counsel learned in the laws, and appoint all other officers requisite and necessary to be had for the speed of the said suit, who shall do their duties without any reward for their counsels, help, and business in the same.

1823—(4)  
Sec. 1.  
Part of county  
tax to be  
annually set  
apart as a  
poor-fund.

§ 11. The judge of the county court, together with the commissioners of roads and revenue, in each county, shall annually set apart such portion of the county tax as they shall deem necessary, for the purpose of creating a fund for the support of paupers within such county; which fund shall be kept separate by the county treasurer; and no money shall be drawn or paid out of said fund, except by order of said judge, for the support of the poor within the county; and in that case it shall be paid to an overseer of the poor, to be by him applied to the purpose for which it is intended: and all overseers aforesaid are hereby required, at the end of the term for which they are appointed, to render an account to the said judge and commissioners, of the manner in which he or they have disposed of the sum or sums of money by them received out of the poor fund the preceding year; and in case any overseer shall neglect or refuse to render such account to the judge and commissioners, as hereby required, he shall forfeit and pay the sum of ten dollars for every such neglect or refusal.

Overseers to  
render account  
of expenditures.

Penalty for  
failing.



sal, to be sued for by the county treasurer, for the use of the poor of each county.

§ 12. It shall be the duty of all overseers of the poor in every county in this state, to make just and true returns of all poor persons under their charge and care, to their county courts, respectively, on or before the court to be held in the month of August in each year; which list shall contain the situation of the paupers, the amount of money necessary to support the same, together with such other circumstances as they may think proper, so as to enable such court to know correctly what sum it may be necessary to appropriate in compliance with "An Act to set apart a separate fund, for the support of the poor in each county," passed January 1st, 1823.<sup>a</sup>

1823—(25)  
Sec. 1.  
Overseer to  
return list of  
paupers, &c.

§ 13. If any overseer of the poor shall fail or refuse to make the report required by the foregoing section, without being able to render a satisfactory excuse for such failure, to be judged of by such court, either by personal appearance, or by affidavit by the succeeding court, such overseer shall be liable to a fine of ten dollars by sentence of such court.

<sup>a</sup>The preceding act.  
1b. Sec. 2.  
Penalty for  
not making  
return.

## PRISONS AND PRISONERS.

### *Commitment, Guarding, and Expenses of Prisoners.*

§ 1. EVERY warrant, mittimus, writ, process, or precept of any kind, or the attested copy thereof, by which any prisoner may be committed to, or enlarged from any jail in this state, shall be regularly filed in its order of time, and safely kept by the sheriff, or keeper of the jail under his direction; and upon the death, removal, or resignation of any sheriff, every such warrant, mittimus, writ, process, and precept, or copy thereof, filed and kept as aforesaid, shall be delivered over to his successor in office, on demand by him made, under the penalty of three hundred dollars, to be recovered of the sheriff so resigned or removed, or his executors or administrators, in case of his death, one-half to the use of the person suing for the same, and the other half to the use of the proper county.

1807—(26)  
Mittimus,  
writs, &c., to  
be filed;

and delivered  
to officer's  
successor.

§ 2. It shall be the duty of the judges of the county courts, at the beginning of every stated court, to inquire into the state of the prisons in their respective counties, with regard to the sufficiency of such prisons, and the condition and accommodation of the prisoners; and they shall, from time to time, take such legal measures as may best tend to secure the prisoners from escape, sickness and infection, and to have the jails cleansed from filth and vermin; and the sheriff shall keep separate rooms for the sexes, except where they are lawfully married, and be responsible that his jailer at all times provides proper meat and drink for all criminals committed to the jail of the county, if such prisoners have no other convenient way of supplying themselves with provisions, which shall always pass to them through the hands of the keeper.

County  
court to in-  
quire into  
condition of  
prisons and  
prisoners.

Every person committed to prison in a civil case, or for a criminal offence, may furnish his or her own support and maintenance; and the sheriff or jailer shall admit any person who will administer to the wants of such prisoner, to furnish him or her with necessary support and maintenance; in such manner, however, as not to aid any escape, or endanger the security of the prison.

Mainten-  
ance of pris-  
oners.



Any person imprisoned in a civil or *qui tam* action, shall furnish his or her own sustenance, or pay the jailer fees for the same, until lawfully discharged; and when any prisoner shall be committed to jail in a civil action, and shall provide for his or her own support, in any way wherein the sheriff or jailer shall have no concern, it shall be the duty of the jailer or prison-keeper, to admit to the wicket-grate, or small window of the prison, in which such prisoner shall be confined, any person who may come to administer to the wants of such prisoner, by furnishing him or her with meat or drink, which shall be conveyed through such small window or grate, that the security of the prison be not too frequently exposed by opening the doors thereof.

State to be charged with criminal's maintenance in case of his inability to discharge jailer's fees.

§ 3. Every person confined for a criminal offence, who may be unable to support him or herself in prison, shall be supplied by the sheriff or jailer under his direction, with daily sustenance; and in case of conviction and inability to discharge the fees for sustenance, or in case of acquittal, and the fees be not taxed on the prosecutor, the same shall be discharged by the state; and no fees, expenses, or perquisites whatever, except what may be allowed by law, shall be taken or received of a prisoner, or charged against the state.

Jailer not to allow prisoners any intoxicating liquors.

§ 4. No sheriff, jailer, or person having the care or keeping of any jail, shall sell or dispose of, to any person or persons under arrest or in prison, any wine, rum, brandy, whisky, or other strong or intoxicating liquor, under the penalty of twenty dollars for each offence, to be recovered before any magistrate of the proper county; one-half to the person suing for the same, and the other half to the use of the county.

Penalty.

1807—(16)

Sec. 1.  
Guard may be summoned when necessary.

§ 5. When any person or persons accused of treason, felony, or other crime or misdemeanor, shall be committed to the jail of any county in this state, and the sheriff shall have cause to suspect such person or persons will attempt to escape, such sheriff is empowered and required to apply to any judge of the county where such person or persons may be confined, who shall, on such application, issue his warrant directed to said sheriff, for a sufficient guard for securing such prisoner or prisoners, so long as he, she, or they continue in jail.

1812—(6)

Sec. 1.  
Expenses occasioned by insufficient jails to be paid by the county.

§ 6. All expenses which may be incurred for guards employed pursuant to the second section of "An Act directing the manner of employing proper guards for the safe-keeping of criminals, in the several counties of this state, and for other purposes," and all and every other legal expense, which shall accrue from the want of a good and sufficient jail, shall be paid out of the treasury of the proper county.<sup>1</sup>

1815—(8)

Sec. 1.  
Where jail is insufficient, prisoner may be committed in another county.

§ 7. It shall be lawful for any judge or justice of the peace, when any person or persons shall be brought before him, charged with any criminal offence wherein bail is not admissible, or where such prisoner or prisoners shall neglect or refuse to give security for his, her, or their appearance, to commit the said prisoner or prisoners to the nearest jail of some adjacent county, provided there is not a sufficient jail in the county in which the offence was committed, there to be kept until the court shall sit in the proper county for the trial of such prisoner or prisoners; and it shall be the duty of the jailer to receive any prisoner or prisoners sent from any county in which there is not a sufficient jail for safe-keeping, upon the mittimus of

<sup>1</sup> See "County Buildings,"—§ 5.



any judge or justice of the peace, of the county from which such prisoner or prisoners are sent.

§ 8. Whenever it may be deemed expedient to call out a guard for the guarding of any prisoner or prisoners, such guard shall receive the sum of one dollar, each, for every day they may serve, to be allowed by the county court, upon the sheriff's certificate, to be paid out of the treasury of the county where the offence was committed.

*Ib. Sec. 2.*  
Guard allowed one dollar per day.

How paid.

§ 9. The common jail of each county shall be the jail of the circuit court for said county: *Provided, however,* That nothing, in this act contained, shall be so construed as to prevent civil officers, judges, justices, &c. from transferring prisoners to the nearest jail which is good and sufficient, when the jail of the county, where such prisoner may be arrested, shall be considered insufficient.

1819—(6)  
Sec. 11.  
Jails of counties to be jails of circuit courts.  
Proviso.

§ 10. When it shall be necessary to remove any prisoner from one county to another, for trial, under an order of court for a change of venue, it shall be lawful for the jailer, sheriff, or such other person whose duty it shall be to remove said prisoner, to draw up his account against the state, for the services performed, including the necessary expenses of travelling to and from the respective counties, which account shall be sworn to before some acting justice of the peace, and certified by the court in the same manner as accounts are now required to be certified for keeping prisoners in the public jails of this state.

1827—(13)  
Sec. 1.  
On change of venue, expense of conveying prisoner to another county to be paid by the state.

§ 11. When such services are performed in apprehending persons fleeing from justice charged with high crimes and misdemeanors against the state, and who shall be apprehended in any other than the county where the offence was committed, it shall be lawful for the officer, jailer, or other person apprehending such persons, to produce evidence, satisfactory to the court before whom the said offences are cognizable, of the performance of such services, and the necessary expenses incurred in the performance of the same: and the said court may allow reasonable and fair compensation, which shall be certified by the court, and the same shall be chargeable on the state treasury, under such rules and regulations as are prescribed for the payment of other charges against the state.

*Ib. Sec. 2.*  
Expenses of apprehending fugitives from other counties, to be certified by the court on proof, and paid by the state.

§ 12. When the solicitor of any circuit shall have good reason to believe that the keeper of any jail has been guilty of cruel and improper treatment towards any prisoner or prisoners, either by beating, or failing to furnish good and wholesome diet, it shall be his duty to commence a proceeding against said keeper in the nature of an information, who, upon being found guilty by a jury, shall be fined at the discretion of the court, any sum not less than five, nor more than one hundred dollars.

1824—(14)  
Sec. 1.  
Jailer liable to be fined for maltreating prisoners.

§ 13. It shall be the duty of every sheriff and other person having authority or power of keeping a jail, or of prisoners for felony, to certify the names of all such prisoners in his keeping, and of every prisoner to him committed for any criminal offence, at the next court having cognizance thereof, there to be calendared before the judge for the deliverance of the said jail, whereby he may proceed to make deliverance of such prisoners according to law.

1807—(18)  
Sec. 13.  
Jailer to certify names of prisoners to the first court after commitment.

§ 14. Whenever any person may be committed to jail in any civil suit, whether upon original, *mesne*, or final process, the jailer of such county shall be entitled to demand and receive of the plaintiff or plaintiffs, weekly, all fees that may become due to him, as well as for finding sustenance for such prisoner; and in case of failure on the part of the plaintiff or plaintiffs to pay the same, such

1811—(11)  
Sec. 22.  
Jailer may discharge prisoner on civil process, if fees are not paid by plaintiff after 10 days' notice.



jailer shall be authorized to discharge such prisoner out of jail : *Provided*, That the jailer shall have given to such plaintiff or plaintiffs, his or their agent or attorney, ten days' previous notice thereof.<sup>1</sup> *Provided, also*, That such discharge shall not go to exonerate any defendant, so discharged out of custody, from the debt for which he had been confined, but the same shall be, as if the defendant had never been committed to jail.

1830—(1)  
Sec. 1.  
Jailer not compelled to receive prisoner under process from U. S. courts, unless there be a good jail in the county.

§ 15. The keepers of the common jails in the several counties of this state, shall not be compelled to receive any prisoner committed upon process from the courts of the United States, unless, at the time of such commitment, there be a good and sufficient jail in the county in which such prisoner may be confined; but if there be a good and sufficient jail, then the keeper of any such jail is required to receive such prisoner, under the like pains and penalties for neglect of duty, as they now are by law, in the case of prisoners committed under the authority of the state.

*Ib.* Sec. 2.  
U. S. marshal responsible for all fees.

§ 16. When any prisoner shall be so committed at the suit of the United States, the marshal making such commitment shall become individually responsible to the jailer for all prison fees, as well as for the fifty cents per month for each prisoner, agreeably to a resolution of the congress of the United States, of the twenty-third of September, 1789.

1833—(42)  
Sec. 1.  
Pay for victualing slave.

§ 17. It shall not be lawful for any jailer to charge more than twenty-five cents per diem, for victualing any slave whilst confined in jail.

*Ib.* Sec. 2.  
Jailer to furnish blankets to slave in inclement weather.

§ 18. When any slave shall be committed to jail when the weather is inclement, or shall remain in jail until the weather shall become inclement, it shall be the duty of said jailer to furnish said slave with two good blankets, for which he shall be paid by the owner or owners of said slave, before he or she is released from custody.

1837—(12)  
Sec. 4.  
Jails of this state not to be used for the confinement of persons arrested under process from courts of U. S. in civil cases.

§ 19. It shall not be lawful for the keeper of the jail of any county in this state to receive into said jail or into his custody, as such jailer, any person arrested by a *capias ad respondendum* or *capias ad satisfaciendum*, issued from any court of the United States, and hereafter, the right of the United States, or any officer thereof, to use the common jail of any county of this state, shall be confined exclusively to the imprisonment and safe-keeping of criminals, who have committed, or who are charged with having committed, a crime against the United States.

<sup>1</sup> No notice is necessary where the plaintiff resides out of the county, and has appointed no agent in it.—See "Executions," § 82.



## PRISON-BOUNDS, AND PRISON-BOUND BONDS.

§ 1. THE bounds of the different counties shall be the limits within which prisoners, confined for debt, shall be restricted, on entering into bond, as now required by law, to keep within the prison-bounds; and, hereafter, the plaintiffs in suits shall not be compelled to pay the sustenance and support of prisoners who take the benefit of the bounds.

§ 2. Any prisoner, imprisoned in a civil action, may enter into bond, with sufficient security to the plaintiff, in double the sum of the debt or damages for which he may be imprisoned; which bond the sheriff or jailer may take, with a condition in the following form, to wit: "The condition of the above obligation is such, that if the above bound A. B., a prisoner in the jail of \_\_\_\_\_ county, at the suit of C. D., do, and shall, from the date hereof, continue a true prisoner in the custody, guard, and safe-keeping of the keeper of said prisoner, or of his steward, deputy, or other officer, or of some of them, within the limits of the prison-bounds of said prison as by law established, until he shall be thence discharged by due course of law, without committing any escape in the mean time, then this obligation to be void, else to remain in full force and virtue"—which bond shall, by the officer taking the same, be filed in the clerk's office of the court, whence the process issued on which such prisoner was arrested, and, if issued by a justice of the peace, it shall be filed in the clerk's office of the county court, and the clerk, in either case, shall be bound to give the officer depositing such bond a receipt therefor, which shall be evidence, in case said bond should be lost, of said officer's having taken the same: and should the condition of said bond be broken, the same may be put in suit, and the debt or damages for which said prisoner was imprisoned, together with ten per cent. interest thereon, from the time of commitment, recovered, and costs of suit.

§ 3. If any person shall obtain the rule of any prison, upon giving bond and security as the law directs, and shall escape out of the same before he shall have paid the debt, or damages, and costs, according to the condition of said bond; upon due proof thereof, it shall be lawful for the court where such bond is lodged, upon motion of the party for whom such execution issued, to grant judgment and award execution against such person and his securities, executors, or administrators, for the debt or damages, and costs, with six per cent. interest, to be computed from the date of such bond until payment: *Provided*, That, if any fact should arise requiring to be tried by a jury, the court shall have power to cause a jury to be empaneled and sworn to try the same; and, if the regular jury attending such court shall be discharged, the court shall cause a jury of qualified bystanders to be summoned for the trial thereof: *Provided, always*, That the obligors, their executors, or administrators, or such of them as it is intended to have judgment entered up against, shall have notice in writing, at least ten days previous to the time of making such motion.

<sup>1</sup> This section is retained as giving a remedy by motion, not provided for by the act of 1824.



## PUBLIC HEALTH.

## CONTAGIOUS DISEASES.

1807—(29)  
Penalty for  
introducing  
or spreading  
small-pox.

§ 1. If any person or persons whatever, shall, willfully and designedly, presume to import or bring into the state from any country or place whatever, the small pox, or any variolous or infectious matter of the said disease, for the purpose, or with a design to spread the same, by inoculation or otherwise ; or shall inoculate, or procure inoculation for the small-pox, after such disease may have been introduced, except under such regulations and restrictions as shall hereinafter be named, he or she, so offending, shall forfeit and pay a sum not exceeding two thousand dollars, and be imprisoned a term not exceeding twelve months, for every offence so committed.

Governor to  
take meas-  
ures to pre-  
vent the  
spreading of  
contagious  
disorders.

§ 2. The governor is hereby authorized, on knowing from his own observation, or by information being given to him by any physician, that the plague, yellow fever, small-pox, or other contagious disorder, has been introduced into a neighboring country, or found admittance within this state ; or on board any boat or vessel, at or near the shores of the same ; to take such measures to prevent a communication of the infection, and for the aid and comfort of the sick within the said state, as he shall deem meet. And all expenses, incurred in the prosecution of this humane intention, shall, by warrant of the governor, be paid out of the moneys of the state treasury, not otherwise appropriated : but, in all cases, the said expenses shall be reimbursed by the person or persons for whom such provisions shall have been made, they being of ability to pay the same.

Expenses,  
how paid.

Under what  
restrictions  
persons may  
be inoculat-  
ed.

§ 3. Whereas, in certain cases, inoculation for the small-pox may not only be prudent, but a necessary measure, for securing those who are or may be unavoidably exposed to the danger of taking the disease in the natural way ; and for this reason it is judged expedient to tolerate the same, under certain reasonable regulations and restrictions: *It is provided, therefore, That*, if any person or persons who may wish to be inoculated, shall petition the governor to that effect, he may appoint him or them a place within this state, that will not endanger the health of the citizens of the same, where the petitioner or petitioners shall resort for the purpose of being inoculated. And should any master or mistress of a family think him or herself, his or her family in danger of catching the small-pox in the natural way, such person shall give like notice to the governor ; and if he shall deem it prudent and proper, and not dangerous to the health and safety of the people of this state, for such person or family to be inoculated, he may admit of the same, or otherwise, as to him shall seem expedient.

Persons hav-  
ing had  
small-pox, to  
obtain certi-  
ficate before  
going out.

§ 4. No patient in the small-pox shall, until after having obtained a certificate from the attending physician, or other person qualified to give such certificate of his, her, or their recovery, and of their being perfectly clean in their persons and clothes, remove from the place where he, she or they shall have had the small-pox, to go abroad in the company of other people, who have not had the disease ; or go into any public road or highway where travelers usually pass, without retiring out of the same, or giving notice on the approach of any passenger, under the penalty of forfeiting and paying for every such offence, the sum of one hundred dollars ; and if a servant or slave, to be paid by his or her master or mistress.



§ 5. All moneys, forfeited under this act, may be sued for in any court of record within this state, having jurisdiction of the same: and the money so recovered shall be appropriated, the one half to the informer, and the other half paid into the treasury of this state.

§ 6. In all cases, where the governor of this state shall receive satisfactory information of the existence of small-pox, or other contagious disorders, it shall be lawful for him to adopt such measures to prevent a communication of the infection of such disorder, and for the aid and comfort of the sick, afflicted with the same, that he could or might do, if the said information were afforded by a physician, in terms of the act of one thousand eight hundred and seven, in such cases provided.

Forfeitures,  
how recover-  
ed and ap-  
propriated.

1843—(44)  
Sec. 1.  
On satisfac-  
tory informa-  
tion from  
any source,  
of existence  
of contagious  
disease, gov-  
ernor to take  
measures to  
prevent its  
spread.

## UNWHOLESOME PROVISIONS.

§ 7. If any butcher, baker, brewer, distiller, tavern-keeper, retailer of wines or spirituous liquors, or other person or persons, shall sell, offer, or expose to sale, or suffer or permit their servant or servants, or other person for him, her, or them, to sell, offer, or expose to sale, any tainted, putrid, or unwholesome fish or flesh, or the flesh of any animal dying otherwise than by slaughter; or slaughtered when diseased, for the purpose of being sold or offered for sale; or any tainted, putrid, or unwholesome bread, or other cooked or raw food of any kind whatever; or any adulterated or unwholesome wines or spirituous liquors; such person shall, for every such offence, on conviction thereof before any justice of the peace within the county or corporation where the offence was committed, on the evidence of any two credible witnesses, forfeit and pay a fine of five dollars, with costs, one half to the prosecutor, and the other half to the overseer of the poor of the district where the offence was committed, for the use of the poor thereof.

1815—(14)  
Sec. 1.  
Penalty for  
selling un-  
wholesome  
provisions  
and liquors.

§ 8. It shall be unlawful for any baker, his or their servant or servants, or other person or persons, to sell, offer, or expose to sale, any bread without having the baker's surname, and the initials of his Christian name, legibly marked on every loaf, cracker, cake, piece, or division of any kind of bread, offered or exposed to sale by whatever name the same may be called; and every person, so offending, shall, for every such offence, forfeit and pay five dollars with costs, recoverable before any justice of the peace, of the county or corporation where the same was offered for sale, on the evidence of one credible witness; one half of the fine to the overseer of the poor for the district where the offence was committed, and the other half to the prosecutor; and shall, moreover, forfeit all such bread, so offered for sale, for the use of said poor.

*Ib.* Sec. 2.  
Penalty on  
bakers for  
selling bread  
not marked  
with their  
names.

§ 9. Any person or persons, who shall follow the business of a baker, shall have the initials of his given name, and his surname at full length, as is intended and directed by the second section of this act, put on record in the office of the register of the orphans' court of his proper county, or in the office of the clerk of the corporation where he may reside; and any person or persons, who shall counterfeit or mark the same, shall, for every such offence, forfeit and pay twenty dollars, on conviction, recoverable with costs before any justice of the peace of the proper county, or corporation, for the use of the poor where the offence was committed.

*Ib.* Sec. 3.  
Bakers to  
have their  
marks re-  
corded.

Penalty for  
counterfeit-  
ing baker's  
mark.



## PUBLIC OFFICERS.

Con. Ala.  
Art. 6, Sec.  
12.  
Who dis-  
qualified.

1829—(14)  
Sec. 4.

Public offi-  
cers may be  
indicted for  
malpractices,  
when the  
law provides  
no other  
remedy.

§ 1. No member of congress, nor any person holding any office of profit or trust under the United States, (the office of post-master excepted,) or either of them, or any foreign power, shall hold or exercise any office of profit under this state.

§ 2. In all cases when no mode is prescribed by law for the punishment of any officer for neglect of duty, or other improper conduct, or for misconduct in office, the officer so offending may be proceeded against by indictment, and, on conviction, shall pay such fine as shall be assessed by the jury trying the same.

NOTE.—For the manner in which public officers may be surrendered by their securities,—See "Securities."

## REAL ESTATE.

## TO PREVENT ITS SACRIFICE.

1842—(2)

Debtor,  
whose real  
estate is sold  
under execu-  
tion, may re-  
deem it by  
paying prin-  
cipal with 10  
per ct. inter-  
est, per an-  
num, within  
two years.

§ 1. It shall and may be lawful, for any debtor whose interest in any real estate may hereafter be sold under execution, at any time within two years after such sale, on payment or tender thereof to the purchaser or purchasers, or on payment or tender thereof to any one claiming under such purchaser, the principal money, bid at such sale, with ten per cent. interest per annum thereon, together with all such other lawful charges, if any there be, to redeem the interest that may have been sold, and upon the payment or tender thereof, as aforesaid, it shall be the duty of the then claimant, to re-convey said interest to said debtor, but at the cost and charge of said debtor.

Other *bona fide*  
creditors  
may redeem  
from such  
purchaser,  
or from any  
one claiming  
under him,  
by like pay-  
ment, &c.

§ 2. Whenever it shall hereafter happen, that any interest in lands shall be sold at any execution sale, and the individual, whose interest is so sold, shall have other *bona fide* creditors, they may, at any time within two years after such sale, redeem such interest as may have been sold, from the purchaser thereof, or from any one claiming under such purchasers; and, on payment or tender of so much money as was bid for said land at said execution sale, and such further sum as shall be equal to ten per cent. per annum on the purchase money, and shall further offer and agree to credit the person whose estate was sold, with the further sum of ten per cent., or more, on the amount bid at execution sale, it shall be the duty of such purchaser, or person claiming under such purchase, to convey said interest so purchased, to such *bona fide* creditors, at the proper cost and charges of such creditors, unless such purchaser or those claiming under him shall pay or secure to be paid, within six months thereafter, to such *bona fide* creditor, the sum proposed to be advanced by him on the bid at sheriff's or execution sale.

If purchaser  
be a *bona fide*  
creditor  
to amount  
proposed to  
be paid, he

§ 3. If such purchaser at execution sale, or the person or persons claiming under him, shall also be a *bona fide* creditor, to the amount proposed to be advanced on the bid at execution sale, at the time that any *bona fide* creditor may propose to make the advance, it



may be at the option of such purchaser, or those claiming under him, to credit the debtor with the sum proposed to be advanced on the bid, and keep the property, or surrender the same, in manner aforesaid, to such person offering to make the advance.

§ 4. It shall and may be lawful for any other *bona fide* creditor of him, whose estate has been sold at execution sale, to redeem from any *bona fide* creditors, who may have previously redeemed for the purchaser at execution sale, upon the same terms and under the same rules and regulations, that are herein provided for *bona fide* creditors to redeem from the purchaser, and so on of other creditors *ad infinitum*.

§ 5. All lands, sold under mortgage, deeds of trust or decrees in chancery, shall be subject to redemption in the same way as is provided for in this act for lands sold under execution: *Provided*, That the defendant in execution, if in possession at the time of sale, shall deliver possession to the purchaser, without suit: *Provided, further*, That the plaintiff in execution, whose debt shall be unsatisfied by the sale of said land, shall be entitled to redeem said land, as other creditors are, by this act, allowed to redeem; *And provided, further*, That any person, proposing to redeem under the provisions of this act, shall, in addition, in each instance, pay the person in possession the intrinsic worth of any valuable and needful improvements made on such land or premises; and if, in any case, the parties cannot agree at once, as to the value of such improvements, they, or either of them, may present or suggest the question to the next circuit court of the proper county, and said court shall, as early as practicable, cause an issue to be made up, and tried by the jury, in such manner as may be just and fair; and the verdict of the jury for a certain amount, or if for no amount, shall be conclusive and final; and each party, in all such cases, shall pay one half the costs, and the said jury may also estimate the value of the rents and profits, by way of offset to the improvements made, and the parties, at their option, may arbitrate the matter in difference, under the law now regulating arbitration: *Provided*, That this act shall not take effect before the first day of July next.

may credit  
debtor and  
keep proper-  
ty, &c.

One *bona  
fide* creditor  
may redeem  
from another

Lands sold  
under mort-  
gage deed of  
trust, or de-  
cree in chan-  
cery redeem-  
able in like  
manner.

## RECORDS.

§ 1. It shall be the duty of the governor, immediately after the passage of this act, to appoint some competent person, whose duty it shall be to translate and to transcribe all the British, French and Spanish records within the limits of this state, and to record the same in a well-bound book, to which shall be annexed an alphabetical index; and to place one copy of the same in the office of the clerk of the county court of Mobile, one copy in the land-office at St. Stephen's, and one copy in the office of the secretary of state.

§ 2. The records, thus transcribed and translated, shall be received as evidence in any court of justice within this state.

1833—(10)  
Sec. 1.  
Governor to  
appoint  
translator.

1b. Sec. 4.  
Records  
translated to  
be received  
as evidence.



## RELIGION.

Con. Ala.  
Art. 1.  
Sec. 3.  
Rights of  
conscience,

§ 1. No person within this state shall, upon any pretence, be deprived of the inestimable privilege of worshipping God in the manner most agreeable to his own conscience ; nor be compelled to attend any place of worship ; nor shall any one ever be obliged to pay any tithes, taxes, or other rate, for the building or repairing any place of worship, or for the maintenance of any minister or ministry.

*Ib. Sec. 4.*  
not to be in-  
terfered with

§ 2. No human authority ought, in any case whatever, to control or interfere with the rights of conscience.

*Ib. Sec. 5.*  
No person to  
be molested.

§ 3. No person shall be hurt, molested, or restrained in his religious profession, sentiments, or persuasions, provided he does not disturb others in their religious worship.

*Ib. Sec. 6.*  
Civil rights  
not affected  
by religious  
belief.

§ 4. The civil rights, privileges or capacities of any citizen, shall in no way be diminished, or enlarged, on account of his religious principles.

*Ib. Sec. 7.*  
No establish-  
ed religion,  
or religious  
test.

§ 5. There shall be no establishment of religion by law ; no preference shall ever be given by law to any religious sect, society, denomination, or mode of worship ; and no religious test shall ever be required as a qualification to any office or public trust under this state.

1819—(17)  
Sec. 1.  
Persons pro-  
fessing reli-  
gion may  
form them-  
selves into  
churches,  
adopt by-  
laws, and ap-  
point officers

§ 6. It shall be lawful for all persons, who are, or hereafter may be, members of any religious denomination, to associate themselves into societies or churches, assume such name as they may think proper, and adopt articles for their government, not inconsistent with the laws and constitution of this state ; any of which churches may appoint deacons, class-leaders, elders, or trustees, at the pleasure of such church, to distinguish them, and may enter of record in their church books, such articles of government, and the names of such leaders or trustees ; which church may cause "a copy of such articles of government *to be deposited, and* the names of their leaders or trustees to be recorded, in the office of the clerk of the county court ; whereupon, such church is declared to be a body corporate, and shall be capable of purchasing, receiving and holding, by such leaders or trustees, lands not exceeding in quantity fifteen acres, together with the appurtenances thereto belonging ; which church shall have, enjoy, and enforce, all the rights, privileges, and powers of any other body corporate, in and over the lands and tenements aforesaid, for the harmonious and public worship of Almighty God : which lands and tenements shall descend in perpetuity to the use of such church and their religious successors, for the purpose aforesaid : *Provided, always,* That when any church aforesaid shall be disposed to change the site for their meeting-house, such church, by their trustees, shall have power to sell and convey the same, and to purchase and receive titles for lands elsewhere, not exceeding fifteen acres.

[a 1833—(3)  
Sec. 1.]  
May become  
a body corpo-  
rate, by hav-  
ing their ar-  
ticles of gov-  
ernment re-  
corded.  
May pur-  
chase real  
estate, not  
exceeding 15  
acres,

and dispose  
of the same,  
in certain  
cases.

1831—(14)  
Sec. 1.  
Churches &  
church-lots  
exempt from  
taxes.

§ 7. The several churches in the state of Alabama, dedicated to religious worship, and the lots on which they are erected, not exceeding two acres of land to each, shall be exempt from any levy of taxation, for state, county, or corporation purposes : *Provided,* The lands so exempted shall belong to, and be the property of, citizens of the United States, and shall be used for the purposes of religious worship and no other, except for the use of schools, and as burying-grounds attached to said churches.

1822—(2)  
Preamble.

Whereas, by the constitution of the state of Alabama, the citizens thereof have the right to worship God according to the dictates of



their own consciences; and whereas, the people, in assembling themselves for the purposes of religious devotion, are often disturbed by the disorderly conduct of wicked persons, for remedy whereof:

§ 8. *Be it enacted, &c.* That if any person or persons hereafter shall be found guilty of willfully raising a riot, getting drunk, swearing, or any other act by which the congregation shall be interrupted, during the continuance of any meeting for the purposes aforesaid, all such person or persons, their aiders and abettors, shall, on due proof thereof, forfeit and pay the sum of twenty dollars, besides costs of suit; to be recovered before any judge or justice having competent jurisdiction: one half to go to the informer, and the other half to the county where such fine may be recovered.

*Sec. 1.*  
Persons disturbing religious congregations may be fined.

§ 9. And whereas, many individuals have been in the habit of retailing spirituous liquors at or near camp-meetings, thereby causing drunkenness and disorder, *Be it further enacted,* That, if any person whatever shall hereafter retail spirituous liquors, or any kind of drink that is calculated to produce drunkenness, within two miles of any camp-meeting, quarterly-meeting, association, or any other religious meeting, during the continuance of any such meeting, such person or persons so offending, their agents or servants, on due proof thereof, shall, for every such offence, forfeit and pay the sum of forty dollars, besides costs of suit, to be recovered before any judge or justice having competent jurisdiction: one half to go to the informer, and the other half to the county where such fine may be recovered:

*Th. Sec. 2.*  
Persons prohibited selling intoxicating liquors within two miles of any religious meeting.

*Provided, nevertheless,* That this law shall not operate upon such persons as actually reside within two miles of such meetings, and who have obtained and hold a license for retailing.

*Proviso.*

§ 10. Hereafter it shall not be lawful for any person or persons to sell, at or near any camp-meeting, association, or any other religious meeting, during the continuance of such meeting, any cider or beer, or any other thing whereby the said meeting may be disturbed; and any person or persons, violating this act, shall be liable to the penalties prescribed by the act to which this an amendment, and to be recovered in the manner directed by the said act.<sup>a</sup>

1826—(23)  
*Sec. 1.*  
Persons not to sell cider, beer, &c.

§ 11. If any person or persons shall willfully interrupt or disturb any assembly of people, met for religious worship, either by making a noise, or by profane discourse, or by rude or indecent behavior, at or so near the place of worship, as to disturb the order and solemnity of such meeting, such person or persons, so offending, shall be subject to indictment, and, on conviction, may be fined, at the discretion of the jury, not less than five dollars, nor more than fifty dollars.

<sup>a</sup> *The preceding act.*  
1840—(33)  
*Sec. 1.*  
Disturbers of public worship liable to indictment.

§ 12. The person or persons, offending as aforesaid, may be prosecuted either under this act, or the act entitled, "An Act to prevent immoral and disorderly conduct at places of religious worship," approved 10th December, 1822, at the option of the informer.

*Th. Sec. 2.*  
Offenders may be prosecuted under this or former act.

RENT.

§ 1. It shall be lawful for any person or persons, to whom any rent may be due, or the executor or administrator of such person, when the demise is not by deed, or if by deed, not specifying the rent to be paid, to recover a reasonable satisfaction for the tenements occupied by the defendant in an action on the case, for the use and

1812—(3)  
Recovery of rent, on parol demise, or deed not specifying the rent.



occupancy of what was held and enjoyed; and if, on evidence on the trial of such action, any parol demise reserving certain rent, or a demise by deed, but no rent therein agreed on, in either case, the plaintiff in such action shall not be nonsuited, but shall recover a reasonable satisfaction for the tenements occupied.

Distress for rent abolished.

§ 2. The common law method of distress for rent shall be and the same is hereby abolished.

1821—(22)

Sec. 1.

Crop raised on rented land not to be executed or removed, until rent is paid.

Lien for one year only.

§ 3. The crop, grown on any rented land in this state, shall not be liable to be taken by virtue of any execution, or removed off the premises of any such rented land, unless the party, so taking the same, shall, before the removal of the crop from such premises, pay, or tender to the landlord or lessor thereof, or his agent, all money due for the rent of the said premises at the time of taking such crop in execution: *Provided, nevertheless*, That such rent or arrears do not amount to more than one year's rent, and if more be due, then the party suing out such execution, paying or tendering to such landlord or his agent, one year's rent, may proceed to execute his judgment, and the sheriff or officer, levying the same, is hereby empowered and required to levy and pay to the plaintiff, as well the money so paid for the rent, as the execution money.

1843—(45)

Sec. 1.

Crop not to be removed until tenant pays all arrears.

Ib. Sec. 2.

If tenant or lessee attempt to remove, landlord or lessor may have process of attachment. Proviso.

§ 4. The crop, grown on any rented land, shall not be removed off of the premises of any such rented land by the tenant or lessee, or any one else, until the tenant or lessee shall first have paid to the landlord or lessor, his agent or attorney, all the rent in arrear.

§ 5. The landlord or lessor shall have the process of attachment, as now provided by law, in the collection of debts against the tenant or lessee, in all cases where the tenant or lessee shall remove or attempt to remove, or be about to remove the crop, or any part thereof, off of the premises thus rented, without first having paid the rent in arrear: *Provided*, The landlord or lessor, his agent or attorney, suing out attachment, shall make affidavit, that the amount sued for, is due or will be due for rent, and the tenant or lessee has removed, or is about to remove the crop off of the premises, without having paid the rent.

Ib. Sec. 3. Rents exempt from execution and attachment, until paid. Proviso.

§ 6. All rents shall be exempt from execution and attachment, until the same may have been paid: *Provided*, That the rents shall be paid within the year that the crop is grown.

NOTE.—The landlord has also a lien for one year's rent, in priority of the claim created by an execution, upon all goods and chattels of the lessee or tenant, upon the leased premises,—See "Executions,"—§ 45.

## ROADS, BRIDGES, AND FERRIES.

1832—(18)

Sec. 1.

Private ways. How opened and kept in repair.

Damages.

Petitioner

§ 1. It shall be lawful for the courts of roads and revenue in each county, on the application of any one or more persons, to grant and establish private roads, not exceeding fifteen feet wide: *Provided*, That they shall not be opened through any person's plantation; *And provided, always*, That the person or persons petitioning shall be bound to open and keep such roads in repair; and shall pay to the owner of the soil over which said roads shall run, all damages that may be assessed against the petitioner or petitioners, for the benefit of the said owner, in the manner of assessing damages in like cases of public roads; *And provided, further*, That such petitioner



or petitioners shall not be exempt from working on public roads, on account of working on such private roads.

§ 2. The corporate officers, in all the incorporated towns in this state, shall appoint overseers on the roads and streets in said towns; and when the hands and overseers are exempt from working on the public roads beyond the limits of said towns, it shall be the duty of the grand juries of the counties in which said towns are situated, to present all overseers of streets in said towns, for failing to keep the principal roads and streets in the incorporated towns in good repair; and the overseers in said towns shall be prosecuted in the same manner, and be subject to the same penalties, as overseers of public roads in this state; and the books and records of said incorporated towns shall be legal evidence of the appointment of the overseers, and the establishment of streets and alleys in said towns.

§ 3. All roads heretofore established or recognized by any act of the general assembly, or an order of any commissioners' court, as public roads, and not since discontinued, are hereby declared to be such; and full power and authority are hereby given to the commissioners' courts of the different counties in this state, under the provisions hereinafter specified, to order and establish new roads; to discontinue such as have, or may, at any time, become useless; to alter roads, so as to make them more useful and convenient; and any order of the commissioners' court, by which a road is recognized as a public road, shall, in all cases, be *prima facie* evidence of that fact: *Provided*, That said court shall, in no instance, grant an order to establish, discontinue, or change, a public road, unless the person or persons, petitioning for the same, shall have given at least thirty days' notice of the intended application, by advertisement at the courthouse door, and at three other public places in the county: *Provided, also*, No change shall be made in any state road by the commissioners' court, at the point where such road may cross county boundaries, unless the court of the adjoining county will make a corresponding change.

§ 4. The mode of establishing a new, or changing an old road, shall be by a jury of seven householders (a majority of whom may act,) appointed by the commissioners' court; and said jury shall, before the clerk of the county court, or other person, qualified to administer oaths, take an oath, that they "will view and mark out the road named in the order directed to them from the commissioners' court, in pursuance of said order, to the greatest advantage to the public, and with as little prejudice to enclosures and private individuals, as convenient, without favor or affection, malice or hatred, and to the best of their skill and knowledge;" and said jury, after having complied with said order, shall make report to said court; but no new road shall be opened between the first day of March and tenth day of July, in any year, nor open through any enclosure whilst there is a crop growing in the same.

§ 5. In case where a new road is established, the owner of land over which it passes, may, at or before the next term of the commissioners' court, apply to said court for damages, for the injury which he may have sustained by its establishment, and it shall be the duty of the court to cause a jury to be empaneled and sworn to inquire of such damages; in which inquiry the jury shall be charged to take into consideration the advantages and disadvantages accruing to such applicant, and to give their verdict accordingly; and the damages (if any) assessed shall be paid out of the county treasury: *Provided*, The court may, in their discretion, order the same jury

not exempted from working on other roads. 1824—(27) Sec. 6. Officers of incorporated towns, to appoint overseers of streets.

1836—(25) Sec. 1. All roads recognized as public roads by act of legislature or order of commissioners' court, declared such. Commissioners' court may establish new roads, discontinue or alter old ones, &c.

What notice required.

*Ib.* Sec. 2. Mode of establishing a new, or changing an old road.

When new road may be opened.

*Ib.* Sec. 3. Owner of land, through which a new road passes, may apply to court for damages.

How assessed and paid. *Provido*.



who lays out the road to be empaneled to assess the damages; and may also appoint, in the order, the time at which the road shall be cut out.

*Ib. Sec. 4.*  
Grades and  
precincts to  
remain as al-  
ready fixed,  
unless, &c.

§ 6. The grades and precincts, or parts, of all the public roads in this state, shall remain as already fixed and divided by the commissioners' courts, unless said courts see proper to alter them; and it shall be the duty of said courts, to divide all those into grades and precincts, which have not already been divided, as well as all new roads they may hereafter establish, and to cause their clerks to make out and keep up a full and complete list of all the roads in their counties, in some separate place on the books of their proceedings, stating their grades, names and parts or precincts, so that an easy reference may at all times be had to the same; and the grades of all roads shall be as follows: The first grade shall comprise roads at least thirty feet wide, with causeways and bridges, at least fifteen feet wide: the second grade, roads not less than twenty feet wide, with causeways and bridges, not less than ten feet wide: the third, not less than fifteen feet wide, with causeways and bridges, at least ten feet wide: all grades shall be cleared of trees and other obstructions, with stumps cut within six inches of the surface, and all lanes shall be at least thirty feet wide.

Width of  
1st grade.

2d grade.

3d grade.

*Ib. Sec. 5.*  
Altering or  
obstructing  
public roads  
without au-  
thority, &c.  
indictable.

§ 7. If any person shall alter or change any public road, unless by order of the commissioners' court, founded on the report of a jury, appointed and sworn, as in the case of laying out new roads; or unless it be done to straighten said road through enclosures; or to render it more convenient to the public; or if any person shall erect, or cause to be erected, across any public road, a fence, bar, or other impediment, or fell a tree or brush or other obstacle on or across the same, and shall not remove it within twenty-four hours thereafter; or if any person shall deface, remove or destroy any mile-post, finger or index-board, causeway or bridge, legally set up or constructed on any public road, such person shall be liable to indictment, and, on being found guilty, shall be fined in any sum the jury trying the offence may assess.

*Ib. Sec. 6.*  
Who liable  
to work on  
roads.

§ 8. The following persons shall be liable to work on, clear out and repair the public roads: All free white male persons, between eighteen and forty-five years of age, and all male slaves and other persons of color, over sixteen and under fifty years of age, unless exempt by some act of the general assembly; or some actual or reasonable inability. And the following persons shall be exempt: All licensed ministers of the gospel, teachers and students of common schools or public institutions, keepers of grist-mills that grind for toll, public ferrymen, commissioners of roads and revenue, and apportioners, presidents and directors and other officers of the state bank and its branches, justices of the peace, judges and clerks of the different courts of this state, sheriffs of the several counties of this state, and the several executive officers of this state.

Who ex-  
empt.

*Ib. Sec. 7.*  
No one re-  
quired to  
work on  
road more  
than 6 miles  
from his resi-  
dence, nor  
more than 10  
days in one  
year.  
All persons  
in 3 miles of  
a new road,  
bound to as-  
sist in open-  
ing it.

§ 9. No person shall be compelled to work on any public road, when every part thereof lies more than six miles from his place of residence, nor be required to work more than ten days in any one year; and all persons shall be required to work on the nearest road to them, unless, in the opinion of the apportioners, an impartial apportionment cannot in that way be made, but all persons, liable to work, and living within three miles of any new road about to be opened, shall be liable to work in opening the same, and when it happens, by accident or otherwise, that any person has been warned to work on two or more roads at the same time, he shall work on



the road on which he was first warned, if, in any case, he would be liable to work on such road, and unless he has been apportioned on some other, and notified or informed thereof.

§ 10. It shall be the duty of every person within the bounds of any beat, on application of any of the apportioners, to be appointed as prescribed in this act, forthwith to furnish a list of all his hands, at that time liable to work on public roads, (himself included,) and if any person neglect, for the space of five days thereafter, to deliver such list to some one of the apportioners, he shall forfeit and pay the sum of six dollars for each hand liable to work, to be recovered before a justice of the peace; and it is hereby made the duty of the said apportioners, to apply for warrants in all such cases, and cause the amount of forfeitures collected, to be paid over into the county treasury.

*Ib. Sec. 8.*  
All persons bound to furnish apportioners a list of hands.

Penalty for neglect.

§ 11. It shall hereafter be the duty of the commissioners' courts, biennially, at the first term in the year, to appoint three discreet householders in each beat in their respective counties, to be called and act as "Apportioners and Supervisors," and also, one overseer for each precinct or part of each public road, who shall hold their offices for the term of two years from the date of their appointment; and should the court fail to make such appointments, the same may be made at any term thereafter; and the judge of the county court shall have the authority of making temporary appointments, and filling vacancies, which may occur from any cause, in either of said offices, and is hereby so required to do. And the said apportioners or supervisors and overseers, on making a showing to the satisfaction of the commissioners' court, that they have faithfully discharged all the duties of their respective offices, for the term of two years, shall receive a certificate of exemption, at the hands of said court, from road duty for the next two years. And the apportioners, before entering upon the duties of their office, shall take an oath, impartially to apportion the hands in their beat, according to the grade and quality of the roads, and faithfully to discharge all the duties of their office.

*Ib. Sec. 9.*  
Com's court to appoint apportioners biennially, at 1st term in year; also, one overseer for each precinct.

Apportioners and overseers serving faithfully two years, exempt for two from road duty. Apportioners to take oath.

§ 12. Within fifteen days, and sooner, if practicable, after the appointments, mentioned in the last section of this act, are made, the clerk of the county court shall furnish to the sheriff a copy of the order of appointment in each case; if it be of an overseer, stating the road and precinct, the grade of the road, and who are the apportioners in his beat; but if the order be of the appointment of apportioners, such order shall be accompanied with a statement, from under the hand of said clerk, of the names of all the overseers in the beat, their precincts, names and grades of the roads. And the sheriff shall, within thirty days thereafter, and sooner, if practicable, deliver a copy to each of said officers, respectively, or leave the same at their most usual places of residence, and make due return of the original to the said clerk; and if the clerk or sheriff neglect either of the duties assigned to them in this act, he shall, in each and every instance, be liable to pay a fine of twenty dollars, to be recovered on one day's previous notice being given, on motion of the state's attorney, before the circuit court. But a service at any time shall be considered binding on the overseers and apportioners, and the said clerk and sheriff shall not hereafter be entitled to receive any thing for *ex officio* services; but, on making a showing to the satisfaction of the commissioners' court, that they have faithfully discharged all the duties prescribed to them by this act, they shall receive, annually, the sum of ninety dollars each, to be paid out of the county treasury.

*Ib. Sec. 10.*  
Clerk of county court to furnish sheriff copy of order appointing overseers & apportioners.

Sheriff to deliver a copy to each of apportioners &c. in thirty days.

Penalty on clerk or sheriff for neglect.



*Ib. Sec. 11.* Apportioner or overseer declining to act, to state reasons to judge of county court. Vacancy to be filled, &c.

§ 13. If any person, duly served with a copy of an order of his appointment as overseer or apportioner, shall fail or refuse to act, such person shall, within ten days, if practicable, after such service, furnish a statement in writing, under oath, to the judge of the county court, of the reasons of his non-acceptance, and the said judge shall forthwith fill the vacancy, and cause such statement to be placed on the state docket of the next circuit court, and in the files of the state papers of said court; and if the reasons be deemed not sufficient, such person shall be liable to be fined by said court, without the intervention of a jury, unless it be demanded, not exceeding one hundred dollars. And, in all cases where such affidavit is not made, the office shall be presumed to have been accepted, and the several officers held responsible accordingly.

Statement not made, acceptance presumed.

*Ib. Sec. 12.* Apportioner's duty on receiving notice of appointment.

To examine condition of public roads, from time to time.

To cause prosecution of delinquent overseers, &c.

*Ib. Sec. 13.* Overseers, not furnished with lists of hands, to apply for them, &c.

May act under former apportionment, if none regularly made.

To measure respective precincts in continuation, and set up mile-posts, &c.

§ 14. It shall be the duty of the apportioners, or a majority of them, within fifteen days, and sooner, if practicable, after receiving notice of their appointment, to proceed and take a list of all the hands within their respective beats liable to work on the public roads; to apportion them on the different precincts, to take care that all who become liable by moving into their beats are placed on their list, and strike off such as become exempt, and, from time to time, during their terms of service, impartially to apportion the hands among the overseers, according to the quality and grades of the precincts. They shall, from time to time, examine the condition of all the public roads in their respective beats; furnish the different overseers with correct lists of hands; see that hands, and owners of hands, are prosecuted for neglect of the duties assigned them; and especially, cause any overseer in their beat to be prosecuted, whose precinct shall be found to be out of repair, by reporting him to the grand jury, by deputing one of their number to attend the circuit court for that purpose. And the apportioner, attending court for this purpose, shall be entitled to receive out of the county treasury, four cents per mile for going and returning, ferriage, and two dollars per day while attending court; unless the overseer be convicted, and, in that case, such expense shall be taxed in the bill of costs against him. And if any apportioner neglects any of the duties prescribed for him in this act, he shall be liable to indictment, and, on being found guilty, shall be fined in any sum the jury trying the offence may assess.

§ 15. It shall be the duty of the overseers in each beat, as soon as practicable after their appointment, if they have not been furnished with a list of hands by the apportioners, to apply for and obtain a list from them, or some one of them, and cause the apportioners to be presented to the grand jury, if they fail or refuse to furnish lists, or discharge their other duties, and shall be entitled to recover the same compensation as is allowed by this act to apportioners, for attending court when necessary. They shall have the right to act under former apportionments, when none is regularly made, and warn and compel all hands to work, who live within two miles of any part of their precinct. When no apportionment, old or new, exists, they may place on their lists any hands, who are liable and have not been apportioned, and such hands are hereby required to work. They shall measure their respective precincts in continuation; set up neat and permanent mile-posts at the end of each mile from the court-house or other noted place on his road; affix at the forks of all public roads, index or finger-boards, pointing towards, with directions to, the most noted places to which they lead, and supply the place of any posts or boards which may be removed; they may contract for the making of the same, and present their accounts, sworn to, which



shall be allowed by the commissioners' court, out of the county treasury. For the purpose of opening a new road, they may warn, and compel to work, all hands within three miles of any part thereof. To keep their road in repair, they shall exercise their discretion as to when they will call out the hands, so that no one can be compelled to work more than ten days in any one year. They shall see that all persons are prosecuted, who injure their roads or precincts.

§ 16. The mode of warning hands shall be by giving at least two days' previous notice, (either by the overseer himself, or some person whom he may appoint, who may, by serving, be exempt from working for the time,) in person or in writing, left at the proper person's place of residence, to all free male persons, as well as to the owner or overseer of slaves, liable to meet at such times and places as he may appoint, and with such tools as he may direct.

For opening new road, may compel all hands, in 3 miles thereof, to work.

*Ib. Sec. 14.*  
Mode of warning hands.

§ 17. If any free person, summoned as prescribed by the fourteenth section of this act, shall fail to attend or send a substitute, with the proper tools, or fail faithfully to perform his duty, or if any owner or overseer of any slave shall fail to send the same to work, in pursuance to the summons, such person, owner or overseer, shall, for each day's default, pay, not exceeding three dollars nor less than one dollar, to be recovered before a justice of the peace of the proper beat; and it shall be the duty of the overseer, to return a list, on oath, of all the defaulters, and take care that they are sued as this section directs, and the list, returned as aforesaid, shall, in the absence of the overseer, be deemed sufficient evidence: *Provided*, The overseer may hear excuses that are good, during the first five days after the default, and the justice of the peace, at any time after, and before judgment, may hear all reasonable excuses; *And provided, also*, That if any overseer return an incorrect list to the justice of the peace, any person, injured thereby, may recover the amount of damages sustained by an action of debt, and, in no case, shall an overseer pay costs, if a defaulter be exonerated, provided, that the costs shall be paid as in other state cases.

*Ib. Sec. 15.*  
Penalty on free person for failing to attend and work—and on owner of slave for failure to send him.

Overseer may hear excuses in five days after default, and justice afterwards.

§ 18. If any overseer fails to prosecute defaulters, as the law directs, it shall be lawful for any person, that is liable to work on said road, to apply to a justice of the peace, and such justice is hereby required to issue a summons against such overseer, requiring him to appear and show cause why the defaulters were not prosecuted; and if such overseer fails to appear and show cause, such justice shall give judgment with costs against him, for as much as the fines would have amounted to, at two dollars for each defaulter, and the officer, collecting the same, shall pay it over into the county treasury.

*Ib. Sec. 16.*  
If overseer fail to prosecute defaulters, any person, liable to work, may do so.

§ 19. The overseer shall cause bridges and causeways to be constructed wherever necessary, unless the commissioners deem it expedient to have the same built by private or individual contract; and whenever, from any cause, a space intervenes between any two beats, precincts, or at a county line on the same road, the overseers on each side shall unite, in proportion to their respective number of hands, in doing the work necessary to bring their precincts together, whether in working the road, building a causeway or a bridge. Should any overseer find it necessary to contract for timber to build a bridge, causeway, or make other improvements on his road, and he cannot agree with the owner of the timber, then, and in that case, he shall appoint some one disinterested person, and the owner of the timber shall have the liberty of appointing some other person; and if the owner neglect or refuse to do so, then the overseer shall appoint two persons, who, after having been first sworn, shall value the timber,

*Ib. Sec. 17.*  
Overseer to cause bridges and causeways to be constructed, unless &c.

If overseer cannot agree with owner of timber for bridge or causeway—how to determine value.



May receive scrapers, dirt-drags, wagons, ploughs and horses in exchange for labor of hands.

*Ib. Sec. 13.*  
Fines against defaulters to be paid to overseer of precinct.

*Ib. Sec. 19.*  
Overseer liable to indictment & fine, in discretion of jury, for neglect of duty.

What proof necessary to conviction.

*Ib. Sec. 21.*  
This act not to apply to Mobile, nor alter or repeal any special act, &c.

1837—(20)  
Sec. 1.  
All property liable to execution against road defaulters.  
1839—(30)  
Preamble.

Sec. 1.  
Com. court may permit owner of land on stream declared a public highway

and should they disagree as to a price, they shall call to their aid a third person, whose decision shall be final; and the owner, on obtaining a certificate of such decision, shall lay the same before the commissioners' court, who shall cause the allowance to be made out of the county treasury. And should the overseer find scrapers or dirt-drags, wagons, ploughs and horses, or any other instruments besides the ordinary farming tools, necessary to put and keep his precinct in good repair, he may, in his discretion, receive them in exchange for the labor of hands, if they can be obtained in that way, or he shall apply to the commissioners' court, who being fully satisfied of the expediency of the application, may, and are hereby required to authorize the overseer to make a contract for such of them, and to such an amount, as they may think proper, and pay the amount out of the county treasury.

§ 20. All persons or officers into whose hands any money may come on account of fines, &c. under this act, shall pay the same over to the overseers of the proper roads, to be by them expended in the improvement of the same. And said overseers shall make return, annually, to the county court and commissioners, showing the manner in which they have expended the same.

§ 21. If any overseer fail to open any new road which he has been appointed to open; or fail or neglect to keep the roads, bridges and causeways within his district or precinct, clear and in good repair; or suffer them to remain uncleared and out of repair for ten days, at any one time; or neglect any other duty prescribed in this act; provided, he be not hindered by high water, bad weather or other sufficient cause, to be adjudged of by the court; such overseer shall be liable to indictment, and, on being found guilty, shall be fined any sum the jury trying the offence may assess. And on the trial of any overseer for a neglect of duty, &c. under this act, proof of his appointment—by the return of the order by the sheriff, or, in case of its loss, by the evidence of the sheriff, clerk or of any other person who knows the fact from any act of the overseer,—shall be taken as *prima facie* evidence, that the road is a public road, and that hands have been, regularly and in due time, appointed on it, and, with the additional proof of the bad condition of the road, the charge shall be considered as established, and the burthen of proof thrown on the overseer.

§ 22. All the laws now in force on the subject of public roads, as well as all laws or parts of laws, which contravene the provisions of this act, are hereby repealed: *Provided*, This act shall not apply to the county of Mobile, nor be so construed, as to alter or repeal any special act for the benefit of any other county, town or company.

§ 23. All property, owned by persons liable to work on public roads, is hereby made subject to levy or sale, by virtue of any execution or legal process that may issue from any justice of the peace, against any person or persons for default aforesaid.

Whereas, in many cases it is found impracticable to erect permanent fences on the shores of large water courses, and much inconvenience is experienced by owners of lands thus situated, through which public roads pass; for remedy whereof:

§ 24. *Be it enacted, &c.* That the courts of roads and revenue of the several counties of this state, are hereby authorized and empowered, to permit any person or persons owning lands on any stream declared by law a public highway, over which a public road may pass, to



erect one or more gates on said road, under such conditions, limitations and restrictions, as said courts may think expedient.

§ 25. In all cases, where there is no legislative enactment upon the subject, the commissioners' courts of the different counties shall have full power and authority to adopt rules and regulations in relation to toll-bridges, causeways and ferries, as well as ways and public roads, and may, at any time, levy a tax to build causeways and bridges, when, in their opinion, the public good requires it; when the work is too great to be done by the proper overseer and his hands; or when no one applies, as hereinafter prescribed, to establish the same: *Provided*, That, whenever any such work is necessary on the line between two counties, the same shall be done at the mutual expense of said counties in proportion to the amount of taxable property in each.

§ 26. When, in the opinion of the commissioners' court, it is expedient to grant a license to any applicant to establish a ferry, toll-bridge or causeway, they may do so, and shall, at the same time, prescribe the rate of toll or ferriage, and, also, require the applicant to enter into bond, with good security, in a sum not exceeding fifteen hundred dollars, payable to the judge of the county court of the proper county, and his successors in office, and conditioned (in the case of a ferry) that the applicant will constantly provide and keep a good and sufficient boat or boats, and ferryman or hands, and keep the banks on each side of the water course in good repair; but, in the case of a toll-bridge or causeway, that it shall be well built, according to the grade of the road it is on, and kept in good repair, so that it may be passed, at all times, with safety and convenience; which bond they may, if they deem it necessary for better security, require the applicant to renew at any time, on giving him ten days' notice, and, if he fail to do so, revoke his license. And should any person, at any time, sustain damage, in consequence of the owner not having complied with the conditions of his bond, the person so damaged may bring an action of debt or covenant on said bond, in the name of the judge of the county court, and recover damages to the extent of the injury sustained, to be applied to the use of the person injured, and such bond shall not become void by reason of the first or any subsequent recovery. And it shall be lawful for any person, detained at any public ferry, toll-bridge or causeway, (in consequence of neglect of duty on the part of the owner,) to obtain a warrant from a justice of the peace, and recover from such owner the sum of ten dollars for each default or neglect, and the same remedy may be had against any owner, who shall demand and secure a greater amount of toll than that prescribed by the court, and no such recovery shall be a bar to an action on the bond, for any breach thereof: *Provided*, Any person may keep a private ferry, &c. at which no toll is charged.

§ 27. If any person shall presume to establish a public ferry, toll-bridge or causeway, and receive toll for the use of the same, without having obtained a license as prescribed by this act, or having received a license, shall (in the case of a ferry) fail to keep the banks on each side at such ferry in good repair, or to keep a good and sufficient boat, or fail to have such ferry attended with sufficient hands for the safe and speedy passage of all persons, horses, carriages, &c. or, in the case of a toll-bridge or causeway, shall neglect constantly to keep the same in good repair, so that it may be traveled over with ease, safety and convenience, such person is hereby rendered liable to indictment, and, on being found guilty, shall be fined any sum the

to erect one or more gates, &c.

1839—(31)  
Sec. 1.  
Toll-bridges, causeways and ferries under direction of Com. court, when no special enactment.

Work on line between two counties, how done.

*Ib.* Sec. 2.  
Com. court may grant licenses for ferries, toll-bridges and causeways, and prescribe rate of toll—taking applicant's bond and security.

May require renewal of bond.  
Person injured may sue on bond.

Penalty for detaining passenger at ferry, &c.

For charging too much toll.

Private ferry, &c. may be kept without toll.

*Ib.* Sec. 3.  
Penalty for establishing ferry, &c. without license—or neglect of duty, when licensed.



Duty of grand jury to present.

jury trying the offence may assess : and it is hereby expressly made the duty of the grand jury to present all such persons ; but no person shall be liable to indictment for not attending to a ferry when the water at the time and place is so low as to be forded with safety and convenience.

*Ib. Sec. 4.*  
Two or more persons owning lands on banks of stream, court may license either.

§ 28. When two or more persons own lands on the banks, where application is made to establish a ferry, and the owners on each bank apply for a license, the court may grant a license to either at their election : *Provided*, The successful applicant shall pay to the owners of land, which it may be necessary to appropriate, such damages as may by him or them be sustained, to be ascertained by the verdict of a jury, on a writ of *ad quod damnum*, to be issued by the clerk of the county court of the county in which the land lies, requiring the sheriff to summon a jury of twelve, who shall be sworn to inquire of and assess the damages, and if the successful applicant fail to pay the damages thus assessed, within thirty days after notice thereof, the court granting such license shall make them secure, and grant it to some other person.

*Ib. Sec. 5.*  
No licensed toll-bridge or ferry to be within two miles of another, unless, &c.

§ 29. No licensed toll-bridge or ferry (unless it be on a sixteenth section, by the trustees thereof, or unless at or within two miles of some town or city) shall be established on the same water course, within two miles, by water, of any toll-bridge or ferry already established.

*Ib. Sec. 6.*  
Penalty for injuring gate to toll-bridge or causeway, or in any way obstructing the privilege, &c.

§ 30. If any person break or injure any gate to a toll-bridge or causeway, pass round or under the same, or do any other act for the purpose of avoiding the payment of the legal toll to the owner of any toll-bridge, causeway or ferry, or in any other manner obstruct the enjoyment of the privileges vested, in pursuance of this act, such person shall be liable to pay to the owner, for each offence, the sum of five dollars, to be recovered by warrant before a justice of the peace ; and, moreover, be liable to the owner, in an action of damages, for the injury done his property, before any court having competent jurisdiction.

*Ib. Sec. 7.*  
Former contracts not to be violated. Proviso.

§ 31. This act shall not violate or avoid any contract, responsibility or obligation heretofore made, incurred, or given to establish a ferry, toll-bridge or causeway : *Provided*, It does not apply to any county or ferry, for which a special act has been passed : but the owners of all causeways, toll-bridges and ferries, heretofore established, shall be liable to be prosecuted, as prescribed in this act, for failure to comply with the duties prescribed in the third section of this act.

*Ib. Sec. 8.*  
Toll-bridges, causeways and ferries on county line, how established.

§ 32. Toll-bridges, causeways and ferries at, or on the line between any two counties, may be established by either county, the applicants, obtaining the assent of such courts, respectively complying with the provisions of this act, by giving bonds, &c. in one or the other of the counties.

1837—(21)  
*Sec. 1.*  
Judge of county court and commissioners of roads, &c. to appoint reviewers of turnpikes.

§ 33. It shall be the duty of the several judges of county courts and commissioners of roads and revenue, in each and every county through which any part of a turnpike road may now or hereafter be constructed, to appoint, at the same time that the overseers of the several roads in each of said counties are appointed, two discreet persons, whose duty it shall be to examine and review the said turnpike road or roads.

*Ib. Sec. 2.*  
Reviewers to examine and report twice a year.

§ 34. It shall be the duty of the commissioners appointed by the first section of this act, to examine the condition of said road or roads twice in each year, and report the condition of the same to the coun-



ty court or courts of the county or counties through which the said road or roads may run.

§ 35. Should the commissioners appointed by this act, at any time, report said road or part thereof out of such order as is contemplated by the charter or charters, the judge of the county court shall forthwith notify the owner or gate-keepers thereof, of the fact, who shall immediately open said gate or gates free of toll.

*Ib. Sec. 3.*  
If turnpike road be reported out of order, gate to be opened.

§ 36. It shall be the duty of the owner or owners or gate-keepers of said road or roads, so soon as the same may be put in the condition contemplated by the charter thereof, to make application to said commissioners, whose duty it shall be, immediately to examine the said road or roads and report the condition thereof to the county court, and, if found to be in proper order, the judge shall authorize the charge of toll.

*Ib. Sec. 4.*  
When put in order, toll may be authorized.

§ 37. The commissioners shall receive, as compensation for their services, two dollars each, for each day they may be employed, to be paid by the owner or owners of said road or roads.

*Ib. Sec. 5.*  
Compensation of reviewers.

§ 38. Should any gate-keeper, or owner of any turnpike road, charge or receive any toll after the same is reported out of order, and before the same is reported to be in proper order, he or they, so offending, shall be fined double the amount of such toll, to be recovered before any justice of the peace.

*Ib. Sec. 6.*  
Penalty for taking toll, when road is out of order.

§ 39. It shall be the duty of the several solicitors in this state, in whose circuit any turnpike road may be located, to issue a *scire facias*, at the instance of, and on behalf of the state, against any owner of said road, whenever the provisions of any law creating such franchise shall have been so violated as to forfeit the same, by mis-user or non-user, or when the said owner shall have done or omitted any act or acts, which amount to a surrender of the rights, privileges, and franchises conferred by the act authorizing the same.

1843—(47)  
Sec. 1.  
Solicitors to issue *scire facias* against owners of turnpikes, in certain cases.

§ 40. The *scire facias*, authorized by the first section of this act, shall be executed on the said owner in any county of this state, by the sheriff of any county where he may be found, and the question of forfeiture shall be tried by jury; and the judgment of the court, where the issue is found for the state, in addition to the costs, shall be, that the franchise be forfeited.

*Ib. Sec. 2.*  
*Scire facias* shall be executed in any county of the state.

§ 41. If any owner or keeper of a public ferry, shall keep or use insufficient or unsafe boats, or shall suffer the banks of the river or creek to remain, for the space of five days at any one time, in bad order, he or she shall be liable to indictment in the circuit court of the proper county, and, on conviction, shall be fined not less than twenty, nor exceeding one hundred dollars, at the discretion of the jury trying the case: *Provided*, That in all cases, proof of high water shall be received in evidence, in excuse or mitigation of the offence; *And provided, further*, That nothing in this act shall be construed to impair any right of action for damages which may arise.

1843—(46)  
Sec. 1.  
Owner of ferry neglecting to keep a sufficient number of good boats, or to keep banks of stream in order, may be indicted.  
*Providos.*

## SALARIES.

§ 1. The several officers, hereinafter named, shall receive annually, and payable quarterly, for all the duties required of them by law, the following sums, to wit:

*Acts consolidated.*



[1842—(4)

Sec. 1.

1839—(32)

Sec. 1.

1843—(48)

Sec. 1.

1842—(4)

Sec. 1.

The governor, two thousand five hundred dollars :

The secretary of state, one thousand two hundred dollars, with such fees as are allowed by law :

The state treasurer, one thousand dollars :

The comptroller of public accounts, one thousand dollars :

The judges of the supreme court, each, twenty-two hundred and fifty dollars, so long as they continue to report the decisions of said court :

The judges of the circuit court, each, fifteen hundred dollars :

The chancellors, each, fifteen hundred dollars :

1819—(5)

Sec. 1.

1834—(23)

Sec. 1.]

The attorney general, four hundred and twenty-five dollars :

The solicitor of the first judicial circuit, three hundred and fifty dollars, and the several solicitors of the other circuits, two hundred and fifty dollars each, with such fees or perquisites of office as may be allowed by law.

1834—(7)

Sec. 1.

Salaries of presidents of the state bank and the branches at Montgomery, Decatur, and Mobile.

§ 2. The following salaries shall be paid to the officers in the Bank of the State of Alabama, and its several branches, to wit:

To the president of the Bank of the State of Alabama, one thousand dollars per annum :

To the president of the branch bank at Montgomery, one thousand dollars per annum :

To the president of the branch bank at Decatur, one thousand dollars per annum :

To the president of the branch bank at Mobile, two thousand dollars per annum.

1843—(1)

Sec. 2.

Salaries of the officers of the state bank.

Clerk, or book-keeper, shall be notary public.

§ 3. The officers of the Bank of the State of Alabama shall be reduced to a cashier, teller, book-keeper, and one clerk; the salary of the cashier shall be fifteen hundred dollars per annum; the salary of the teller, twelve hundred dollars per annum; the salaries of the other officers, each, one thousand dollars per annum; and the clerk or book-keeper of the said bank shall, under the directions of the cashier, perform the duties of notary public, in all cases of paper belonging to the bank, or lodged with it for collection, and shall not be allowed to demand any fee of the bank, but shall be entitled to them from the party protested, or depositing the paper.

1843—(6)

Sec. 7.

Salaries of the officers of the branch at Mobile.

§ 4. The officers of the branch bank at Mobile, shall consist of a cashier and three clerks: the salary of the cashier shall be eighteen hundred dollars per annum; and the salaries of the clerks shall not exceed twelve hundred and fifty dollars per annum for each one of them.

[1843—(7)(8)

(9)]

Of branches at Huntsville, Decatur & Montgomery.

[1839—(6)

Sec. 5. &amp;

1843—(3)]

Compensation of bank attorneys.

1834—(7)

Sec. 2.

Each bank shall pay its own officers.

§ 5. The officers of the branch banks at Huntsville, Decatur, and Montgomery, shall consist of a cashier and two clerks; the salary of the cashier shall be fifteen hundred dollars per annum, and the two clerks shall have one thousand dollars each per annum.

§ 6. The several attorneys of the Bank of the State of Alabama and its branches, shall receive perquisites not exceeding one thousand dollars, payable quarterly, and no more.

§ 7. The salaries of the aforesaid officers shall be paid by their respective banks, in quarter-yearly payments, out of the profits of the same, and no other perquisites or emoluments shall be allowed or paid to any officer for extra services, traveling expenses excepted, when on the business of the bank.

1836—(27)

Sec. 3.

Judge of supreme court liable to forfeit part of his salary for absence.

§ 8. If any judge of the supreme court shall fail or neglect to attend any term of said court, at the commencement thereof, or, after having attended, shall absent himself before the final adjournment of said court, every such judge, so failing or neglecting to attend, or absenting himself, (unless the same shall be necessary on account



of the sickness of himself or his family, to be proved by his own affidavit, which shall be produced to the comptroller of public accounts, and filed in his office,) shall forfeit the sum of twenty-five dollars, to be deducted from his salary, for each and every day he may so neglect or fail to attend, or shall absent himself.

§ 9. If any judge of the circuit courts of this state, shall fail or neglect to attend any term of any circuit court, which it may be his duty to hold, at the commencement thereof, or, after having attended, shall absent himself therefrom, before the end of the term of any such court, as fixed and prescribed by law, (unless the business of said court shall be sooner disposed of,) every such judge, so failing or neglecting to attend, or absenting himself, (unless the same shall be necessary on account of the sickness of himself or his family, to be proved by his own affidavit, which shall be produced to the comptroller of public accounts, and filed in his office,) shall forfeit the sum of twenty-five dollars, for each and every day he may so fail or neglect to attend, or shall absent himself.

*Id. Sec. 4.*  
Penalty for neglect or failure of circuit judge to attend court.

§ 10. It shall be the duty of the clerk of the supreme court, whenever any judge thereof shall fail or neglect to attend at the commencement of any term of said court, or, after having attended, shall absent himself from said court, before it shall have finally adjourned, immediately after the final adjournment of said court, to certify to the comptroller of public accounts, the number of days any such judge shall have failed or neglected to attend said court, or shall have absented himself therefrom after having attended; and, in like manner, whenever either of the judges of the circuit courts of this state, whose duty it may be to hold the term of any circuit court, shall fail or neglect to attend at the commencement of the term of any such court, or, after having attended, shall absent himself therefrom before the expiration of the term thereof, as fixed by law, (unless the business therein shall be sooner disposed of,) it shall be the duty of the clerk of any such circuit court, immediately after the final adjournment thereof, or after the expiration of the time fixed by law for holding the same, to certify to the comptroller of public accounts the number of days said judge shall so have failed or neglected to attend, or shall so have absented himself after attending said court. And it shall be and is hereby made the duty of the comptroller of public accounts, at the time the next quarter's salary of any such judge of the supreme or circuit court shall become due, to deduct therefrom the sum of twenty-five dollars per day, for each and every day such judge of the supreme court, or of the circuit court, (as the case may be,) shall have failed or neglected to attend any court, or shall have absented himself therefrom, under the provisions of this act, according to the certificate of the clerk of the proper court, unless such judge shall make affidavit, as required by the second and third sections of this act.

*Id. Sec. 5.*  
Clerk of supreme court to certify neglect or failure of judge of supreme court to comptroller of public accounts.

Clerk of circuit court to certify, in like manner, failure or neglect of circuit judge.

Comptroller's duty thereon.

§ 11. If the clerk of the supreme court, or the clerk of any circuit court, shall fail or neglect to perform the duty required of them, respectively, by the fifth section of this act, for the space of thirty days, every such clerk, so offending, shall be liable to be fined in the sum of one hundred dollars, to be recovered on motion of the solicitor in the circuit court of the proper county, one day's previous notice in writing, being given of any such motion.

*Id. Sec. 6.*  
Penalty for neglect of duty by clerk of the supreme or circuit court.



## SALT-PETRE.

1826—(28)  
Salt-petre  
works to be  
enclosed.

§ 1. ANY person or persons, who may be engaged in the manufacture of *salt-petre*, in this state, shall enclose with a strong substantial fence at least ten rails high, all the works which may be used by him or them, within three days after he or they shall erect such works; and all those, who may have such works in operation, shall enclose the same, in like manner, on or before the first day of March next.

Penalty.

§ 2. If any person or persons shall fail to comply with the requisition of the first section of this act, such persons shall, on conviction thereof, be fined by the jury trying the same, in a sum not less than twenty dollars, nor more than one hundred dollars, to be paid to the use of the person or persons aggrieved thereby.

## SALT SPRINGS.

1819—(30)  
How leased.

§ 1. THE governor is hereby authorized to appoint one fit and proper person, who shall have power to lease the salt springs and lands donated by the congress of the United States, by the act of the second of March, eighteen hundred and nineteen, to this state, for a term not exceeding that stipulated in said act of congress, on such terms as will ensure the working the same most extensively, and most advantageously to this state.

1843—(49)  
Sec. 1.  
Governor to  
farm out salt  
springs and  
wells.

§ 2. The governor is hereby authorized, after obtaining the necessary information in relation to the salt springs and wells belonging to the state, to farm them out to the best advantage, and take the necessary bonds and security for the proper working and care of the same.

## SALVAGE.

1836—(29)  
Bales of cotton or other merchandise found afloat in any river of the state, may be taken and secured.  
Compensation for keeping and securing such articles.

§ 1. ALL bales of cotton or other articles of trade or merchandise, which may be found afloat in any of the rivers of this state or other navigable streams, may be lawfully picked up, by any persons, who may think proper to do so, and the same may be secured by placing it on the bank above high water, until the owner or owners or their authorized agents shall make demand of the same.

§ 2. So long as the said cotton or other articles shall be kept and secured above high water, it shall be lawful for the person or persons, so keeping and securing, to demand and receive from the proper owner or owners, or their agents, the following rates of compensation, to wit: for each bale of cotton, the sum of five dollars; for each barrel of flour, whisky, &c. or other articles computed by the barrel, the sum of one dollar.

Loaded flat-boats found afloat without charge

§ 3. If any flat-boat, loaded with coal or other article computed by the bushel, shall be found afloat as aforesaid, and without the charge of the proper owner, agent, &c., it shall be lawful to secure



the same by cabling or otherwise, until demand shall be made as aforesaid, and upon such demand, the person securing shall receive ten cents per bushel for which said boat may be loaded.

of owner or agent, may be secured.

§ 3. If any rafts of lumber, shingles, staves or other articles computed by the thousand, shall be found afloat, as aforesaid, it shall be lawful to secure the same in like manner, by cabling, and the person securing shall be entitled to demand and receive two dollars per thousand.

Also, rafts of lumber, shingles, staves, &c.

§ 5. If any rafts of cedar logs, or other articles computed by the cubic foot, shall be found afloat as aforesaid, it shall be lawful to secure the same, and the person securing shall be entitled to demand and receive two cents per cubic foot.

Rafts of cedar logs may be secured, &c.

§ 6. When any of the articles, herein provided for, shall be demanded by the proper owner or owners, or their agents, at the place where the same is secured, such owner or owners, or agent, shall tender to the person possessing and securing, the amount due according to the rates herein provided, and the person securing shall not be bound to deliver the articles until such tender is made: *Provided, always*, That, if any doubt exist as to the right of the party demanding, to receive the article, the person so demanding shall make an affidavit of his or their right before some justice of the peace of the neighborhood; and should any person swear falsely in making such demand, he shall be liable to all the penalties prescribed by law, for the commission of willful and corrupt perjury.

When any of said articles are demanded, the amount due for securing &c. to be tendered.

If right be doubtful, how established, &c.

§ 7. If, upon such demand, tender and oath, the person in possession and securing shall refuse, for the space of ten hours, to deliver said articles, he or they shall forfeit and pay the proper owner of such articles, three times the value of said articles so detained, to be recovered by the appropriate action in any of the courts of this state.

Penalty, if articles be not delivered on demand and tender.

§ 8. It shall be the duty of any and every person, who may seize and secure any article as before directed, within five days thereafter, to put up a notice in writing, at one or more of the steam-boat landings, nearest to the place where said articles are received; in which notice he shall describe the article taken up and secured by him, any marks it may have, and the place where it is received.

Notice in writing to be given by party taking and securing such property.

## SCHOOLS, AND SCHOOL LANDS.

§ 1. SCHOOLS, and the means of education, shall for ever be encouraged in this state; and the general assembly shall take measures to preserve, from unnecessary waste or damage, such lands as are or hereafter may be granted by the United States for the use of schools within each township in this state, and apply the funds, which may be raised from such lands, in strict conformity to the object of such grant.

Con. Ala. Art. 6. Schools established and encouraged.

Whereas, the constitution of Alabama requires that schools and the means of education shall forever be encouraged in this state, therefore, in pursuance thereof,

1837—(22) Preamble.

§ 2. *Be it enacted*, &c. That the court, composed of the judge of the county court and the commissioners of revenue and roads of each county of this state, (or the court which may be authorized to levy the county tax,) shall, where the same has not been done, at their first annual session held after the first day of January next, appoint

School commissioners appointed.



three freeholders, or householders, in each township in the county, (where the population of the township will admit thereof,) who shall be called "School Commissioners;" each of whom, while he continues to reside in the township, shall continue in office for four years from the time of his appointment, and until his successor shall be duly qualified, according to the provisions of this act.

Where townships are divided, how appointed.

§ 3. Where a county line divides a township, the school commissioners thereof shall be appointed by the court aforesaid, of the county containing the greater part thereof, and shall cause their reports and accounts to be rendered to such courts; and shall, in all respects, as to the object of this law, be as completely within the jurisdiction and control of such court, as if the whole township was within such county.

To give bond.

§ 4. Each of the school commissioners, appointed in pursuance of this act, before entering on the duties of his office, and within one month after his appointment, shall enter into bond, with such security as shall be approved of by the judge aforesaid, for the faithful performance of the duties of his office, and shall, before some judge or justice of the peace, take and subscribe the following oath, and cause the same to be delivered to the clerk of the court aforesaid, whose duty it shall be to file and preserve the same in his office, to wit: "I do solemnly swear, or affirm, (as the case may be,) that I will, to the best of my skill and ability, and without partiality or favor, discharge the duties of school commissioner of township and range, so long as I continue in said office: So help me God."

Oath.

Vacancies, how filled.

§ 5. Whenever a vacancy shall occur by the death, removal or refusal to act, or disqualification of any of said commissioners, from any other cause, the court aforesaid, so soon as the same shall be known to them, shall proceed to fill such vacancy, and, in like manner, whenever said court shall deem it expedient, in and for any township in which such appointment shall not have been made, they shall proceed to make such; and each commissioner, so appointed, shall, under the restrictions aforesaid, hold his office for four years from the time of his appointment, and until his successor shall be duly qualified.

Acts of a majority valid.

§ 6. In all the official proceedings and contracts of said school commissioners, the acts of the majority or of the one in office, if but one be in office, shall be, in all respects, as valid as if done by all three.

Surveys to be made.

§ 7. The school commissioners of each township, as soon as practicable, shall, with the assistance of a skillful surveyor, to be by them employed, and who shall act under their directions and instructions, proceed to lay out the section numbered sixteen, or such part thereof, as they may deem expedient, into lots containing not less than forty nor more than one hundred and sixty acres, and make two plots of such surveys; said commissioners shall select and mark on such plots such lot or lots as they may think proper to reserve from cultivation, for the benefit of the timber thereon, and said commissioners shall, on said plots, distinguish each lot by a number marked thereon, and retain one of said plots, and cause the other to be filed in the office of the clerk of the court aforesaid, for the inspection of all persons concerned.

Timber for the benefit of tenants.

§ 8. The lot or lots, so reserved for the benefit of the timber, shall, until otherwise directed by law, be for the common benefit of the lessees or tenants in said sixteenth sections, but the timber thereon, or any part thereof, shall not be cut down, so long as there shall



be sufficient on the other lots of the sections, respectively, of which matter said school commissioners shall determine, and may, from time to time, by order, (to be recorded and reported with their other proceedings as hereinafter directed,) authorize the tenants on said section, to cut down and remove timber from the lots reserved, in such quantities and for such persons, towards the support of their respective tenements, as said commissioners may deem consistent with the interest of their township.

§ 9. The school commissioners aforesaid shall, from time to time, at or before the expiration of the leases on said sections, now in force, proceed to lease the several lots so laid out, except those reserved as aforesaid for timber; each lease shall be for a term not exceeding five years, at the discretion of the commissioners, commencing on the first day of January. The commissioners shall require and stipulate for such improvements on the tenements or lot as they deem expedient, and may, in any case, when they think it necessary, require security for all rents and improvements. A rent shall be reserved, to be paid annually on the first day of January; but where the value of the improvements to be made on the lot, in the opinion of the commissioners, shall so require, they may stipulate, that the annual rent shall commence and be payable at a certain period after the commencement of the lease: in all cases, where improvements are required to be made, and in all other leases in which said commissioners deem it expedient, bond, in such penalty as they shall prescribe, and such security as they may approve, shall be given and made payable to said commissioners and their successors for the use of the township. The leases shall be offered at some place in the township, at public auction, to the highest bidder, and at least six weeks' previous notice, of the time and place thereof, shall be given by advertisement put up, at least, at four public places in the township, and at the door of the court-house, and, if the commissioners deem it expedient, in some neighboring newspaper. By the terms of lease, the lessee shall be bound to treat the land, houses and improvements in a careful and husbandlike manner, to commit no waste, and shall be under such further restrictions as to cutting timber, taking away stone, or in any other respect injuring the lot so leased, or the lot or lots reserved for timber as aforesaid, as such commissioners may deem expedient; and if any such lessee, or person or persons claiming under him, shall commit any waste on the lot so leased, or the lot reserved for timber, or fail to pay said annual rent, such lease shall be forfeited, if the commissioners shall so require.

Lots to be leased not more than five years.

Commissioners may stipulate for improvements and require security for rents.

Where and on what notice leases are to be offered at public auction.

What stipulations required of lessees.

§ 10. The commissioners of each township, who shall act under the authority of this law, shall have power, with the consent of a majority of the voters in each township, to divide the township into any number of convenient school districts, with such number of scholars in each, as may be practicable.

Townships may be divided into school districts.

§ 11. On application to the school commissioners by any three or more freeholders or householders, residing in any such school districts, they shall issue their warrants, directed to one of the persons so applying, to warn all the inhabitants of each district, qualified to vote at general elections under the constitution of this state, to meet at a certain time and place in the township named in said warrant, to vote for three trustees of said school district; notice of the time, place and object of such election shall be given by such advertisement, which the commissioners shall cause to be set up at two or more public places in the district, at least fifteen days before such

Trustees to be elected.

Notice to be given to freeholders in the district.



Two judges  
and a clerk to  
be appoint-  
ed.  
Their duties.

Vacancies,  
how filled.

Commission-  
ers and trust-  
ees, bodies  
corporate.

May appoint  
a clerk and  
treasurer.

Duty of  
clerk.

election, and notice, so far as the same can be conveniently done, shall also be given, by the person to whom the warrant aforesaid shall be directed, to the several voters of each school district, personally, or by leaving the same in writing at their respective dwellings. The commissioners shall appoint two judges and a clerk of said election, who shall, each, before some judge or justice of the peace, swear, (or affirm,) that he will faithfully and impartially execute the duties of said appointment. The clerk shall keep a fair list of all the votes taken; the list and return of the election shall be subscribed by the judges and clerk, and transmitted to the commissioners of the township, who shall decide in cases of contested elections. The trustees, so elected, shall continue in office for two years from the time of such election, and until their successors shall be elected: *Provided*, They shall, during that period, continue to reside in the district. Vacancies, which may occur by removal, expiration of the term of office, or other cause, shall, in like manner, be filled by elections; notice thereof to be given and to be conducted as aforesaid; and, in all official proceedings and contracts of the trustees of the districts, the acts of a majority, and, if but one be in office, the acts of that one shall be, in all respects, as valid as if done by all three.

§ 12. The said school commissioners of each township and said trustees of each school district for the time being, and their successors, respectively, during their continuance in office, are hereby constituted bodies corporate, and by said corporate name, may sue and be sued; and said trustees shall have power to hold in trust, for the purposes of education, real estate, in their respective townships, not exceeding two acres, and personal estate, five hundred dollars, to them and their successors in office forever; and in all cases when it shall be necessary for the school commissioners of a township, or trustees of a school district, to contract, appear or act in their corporate character, any deed, warrant or other writing, executed by them, or a majority of those acting, or by any one acting solely under the provisions of this act, shall be, in all respects, as valid and effectual in law, as if the same were executed under their common seal as a corporation.

§ 13. The school commissioners shall have power to appoint and discharge at pleasure a clerk and treasurer. The clerk shall record the proceedings of the commissioners, file and preserve such papers as they may direct, and furnish the treasurer, from time to time, with statements of the debts and moneys, which such treasurer may be authorized to receive. The clerk shall, moreover, on the first day of the first session of the court aforesaid, held after the first day of January in each year, transmit to said court a statement of the proceedings of the commissioners for the twelve months next preceding, and of the school land and fund of the township, setting forth the lots leased or to be leased, dates of the leases, names of the lessees or tenants in possession, rates of rent, amount thereof paid, or remaining due and unpaid, and the steps taken for the recovery of the same; the amount of debts due to the township, amount of funds in hand, sums allotted to each school district, and amount thereof paid out by the treasurer; names of the teachers, for the last twelve months, for the different districts, and terms of their engagements; number of pupils at school in each district, and number paid for out of the school fund; and, on failure of any such township clerk to transmit a statement as aforesaid, said courts, respectively, are hereby empowered to compel such clerk, by process of attachment or otherwise, to bring



before them the above described records. The treasurer shall give bond, in such penalty as the commissioners shall prescribe, with approved security, payable to them and their successors in office, conditioned, that he shall faithfully perform the duties of his appointment, account for and pay over, according to law and the regulations and orders of said commissioners and trustees, respectively, all moneys which he shall receive by virtue of said appointment. It shall be the duty of such treasurer to receive all moneys, which may become due for rents or may be, in any other way, accruing to the school fund of the township or any school district therein; to keep fair and regular accounts, and on or before the first day of January in each year, to deliver to said commissioners of the township, or their clerk, a statement thereof, for the twelve months next preceding, showing the several sums received and paid out, vouchers therefor, debts remaining due and unpaid for rent or otherwise, and the balance remaining in his hands; which balance he shall, at the same time, produce before said commissioners.

Treasurer to give bond.

Duty of treasurer.

§ 14. The commissioners of each township shall, annually, at a meeting by one of them to be called for that purpose, apportion the funds then in hand among the several school districts therein, in proportion to their respective numbers of pupils entered to school for the preceding year, as aforesaid; and the clerk shall forthwith furnish the treasurer with a copy of such order of apportionment.

Commissioners shall apportion funds among the several school districts.

§ 15. The trustees of each school district, and where the township supports but one school, the commissioners, shall have power to employ a teacher or teachers, on such terms as they may deem expedient. No teacher shall be employed, until he shall have been duly examined by the commissioners of the township, and shall produce their certificate of his qualifications and good character. No money shall be drawn from the treasury, or shall be expended for building schoolhouses, for furnishing the same, or for any purpose except in payment of tuition.

May employ teachers, after satisfactory examination by commissioners.

§ 16. It shall be the duty of the clerks of the county courts of the several counties in this state, to transmit to the governor of this state, an abstract of the several reports made by the different township clerks to said county courts; said report shall be forwarded by the first week of each annual session of the general assembly; and, upon the failure of any clerk aforesaid to make such report, or cause the same to be done, and forwarded as aforesaid, such clerk, so failing, shall be deemed guilty of a misdemeanor in office.

Abstract reports to be transmitted to governor.

§ 17. Any person or persons, who have settled on the sixteenth section in any township, are authorized to remove any mill, water-works, or other machinery, which may have been erected by him, her, or them, on the same: *Provided*, That the agents or commissioners of the sixteenth section, in each township, do not purchase the same, under such rules and regulations as are hereinafter specified.

1820—(24)  
Sec. 1. Settlers on 16th sections allowed to remove mill-works, &c.

§ 18. The agents or commissioners of school lands, in each township, are hereby vested with power and authority to purchase any mills or other machinery erected by any settler on the sixteenth sections, on such terms as they may deem equitable and just. And the purchase-money shall be paid by said agents or commissioners, out of the money arising from the rents or leases of the sixteenth section, on which such mill or machinery may be erected.

Ib. Sec. 2. Agents may purchase such works.



## SALES OF SIXTEENTH SECTIONS.

1837—(32)

Sec. 15.

School commissioners to take sense of inhabitants of townships as to sale of 16th sec.

To certify result to judge of county court.

Contested election, how decided.

Return, when township is divided by county line.

Ib. Sec. 16.

When sale is determined on, judge to issue order of sale to Com., who shall divide sections into lots, and fix minimum price.

§ 19. It shall be the duty of the school commissioners of the several sixteenth sections in this state, at any time, on giving twenty days' public notice, by advertisement in three of the most public places in the respective townships, to hold an election to ascertain the sense of the qualified electors, who may be inhabitants of such townships, respecting the sales of their sixteenth sections under the provisions of this act; and the commissioners conducting the said elections shall, before they open the polls of said elections, take an oath, before some person authorized to administer the same, that they will faithfully and impartially conduct the same, and make a true return thereof according to law; and they shall provide a ballot-box, and cause the voters to write upon their tickets, "sale," or "no sale," and they shall keep the polls open from ten o'clock in the forenoon, until four in the afternoon, at which time they shall close the polls and count out the ballots, and certify the result to the judge of the county court of the proper county; and if there be no judge in office, then they shall certify the same to the clerk of the county court of the proper county, and shall keep the ballot-boxes, with the votes therein, sealed up for twenty days, when they shall be destroyed, if no person contests said election; and in the event any such election be contested, then the judge or clerk, as the case may be, shall have power to decide such contested election: *Provided*, That, in any case where a township shall be divided by a county line, the return of the ballot, and the certificate of the result of the election therein, required by the said commissioners, shall be made to the clerk and to the judge of the county court of that county, in which the major part of said section may lie.

§ 20. In all cases, where a majority of the qualified electors in any township have chosen to sell the sixteenth section therein, and no person has contested and set aside the election, it shall be the duty of the judges of the county courts of the proper counties, and of the clerks of such counties as have no judges in office, at the expiration of twenty days from such election, to issue an order of sale to the commissioners of such sections as are elected to be sold; and said commissioners shall, on the reception of such order of sale, cause the sections so elected to be sold, to be surveyed in such manner and in such parcels, as will, in their judgment, command the highest price for the same, and shall cause a fair plot of the same to be made out by the surveyor, and shall fix a minimum price upon each lot or part, being first sworn truly to value the several lots so surveyed, and to fix the minimum price thereon; and some one of said commissioners shall keep said plot of said section, with the minimum price fixed upon each lot or part, and shall exhibit the same to any person wishing to examine the same before sale; and the said plot shall, moreover, be exhibited to all persons wishing to examine the same on the day of the sale hereinafter provided for; and if a sale cannot be effected at the minimum price of any sixteenth section or part thereof, on the day appointed for sale by the commissioners of any section, they may, again, on giving notice as herein before provided, offer the same for sale at the expiration of each succeeding three months, and if, in four attempts or offers to sell, no person will give the minimum price, the said commissioners may reduce the price, if they think the interests of the inhabitants require it, and again offer the land for sale as above.



§ 21. As soon as said sections are surveyed, as herein above provided for, the said commissioners, or a majority of them, shall, on giving thirty days' previous public notice by advertisement in three public places within the township, and such other public notice as said commissioners may think fit, of the time and place of sale, and terms of sale, go upon the ground, and cause the several lots of said section to be offered for sale, and sold to the highest bidder above the minimum price, at public auction, on a credit of one, two, three and four years, in equal annual instalments; the purchaser securing the several payments by separate notes, with two or more good securities, to be approved by the commissioners; which notes shall be made payable to the president and directors of the Bank of the State of Alabama, or any branch thereof, and shall bear interest at the rate of six per centum per annum, from the day of the sale; and the said commissioners shall, moreover, give to the purchaser or purchasers of one or more lots, certificates of purchase, showing the quantity of land in acres, and describing the lot or lots, part or parts, so purchased, and stating the amount of purchase-money agreed to be given; which certificates shall be acknowledged in open court, or before some judge or justice of the peace for said county; and shall operate as a title, upon condition only, that the whole payments shall be made; and the legal holder thereof shall obtain a patent therefor from the governor of the state, upon producing to the governor the certificate of the president and cashier of the Bank of the State of Alabama, or any branch thereof, certifying that the full amount of the purchase-money mentioned in the said certificate has been paid: *Provided*, That, whenever any purchaser of any portion of a sixteenth section shall sell the same, the president and directors of the Bank of the State of Alabama, or any branch aforesaid, may, (upon receiving satisfactory evidence from the commissioners appointed to sell the same, or from the judge and commissioners of revenue of any county in which said lands may lie,) have the power to make and renew notes, and take additional securities, whenever they may deem such change necessary or proper: *Provided, always*, That the land shall always be held liable, until final settlement be made for the same by the last purchaser.

§ 22. Before any sale of the sixteenth sections shall be made, it shall be the duty of the school commissioners of said section, to enter into bond and security to the governor of the state, and his successors in office, in such sum as the judge of the county court of the county wherein said section or the greater part thereof may lie, shall direct, not exceeding fifteen thousand dollars, conditioned, that they will faithfully perform the duties required of them by this act, so long as they continue to act as such commissioners.

§ 23. It shall be the duty of said commissioners, so soon as they have sold any of the sixteenth sections or part thereof, under the provisions of this act, to make an entry, in a book to be kept for that purpose, of all sales by them made, to whom made, and for what amount of money, what in notes, who are principals and securities; and to make a return of said sale to the judge of the county court of the proper county, (or to the clerk, if there be no judge,) who shall cause an entry thereof to be made in the office of the clerk of the county court; and the said commissioners shall, also, deliver to said judge or clerk, (as the case may be,) all the notes taken for the sale of said section or any part thereof, and take his receipt therefor; and said judge or clerk (as the case may be) shall forward the said notes to the president and directors of the Bank of the State of Alabama or

*Ib. Sec. 17.*  
Thirty days' notice of terms and mode of sale to be given.

Notes payable to bank with 6 per ct. interest.

Purchaser to have certificate.

To have patent on certificate of full payment.

If purchaser sell, bank may renew notes, with additional securities.

*Ib. Sec. 18.*  
Before sale, commissioners to give bond.

*Ib. Sec. 19.*  
Commissioners to enter sales in a book, and make return of sales, &c. with notes, to judge of county court.

Judge to forward notes to bank.



How collect- any branch thereof, as aforesaid, who shall receive and collect the same as other debts, according to the common course of law between individuals, and a payment at any other place than to the president and directors of the Bank of the State of Alabama or any branch thereof, shall not be deemed a good and valid payment.

*Ib. Sec. 20.*  
Commission-  
ers to pay  
school funds  
into bank, &  
bank to open  
account  
therefor.

§ 24. The school commissioners for the several sixteenth sections in this state, which may be sold by virtue of this act, shall pay into the Bank of the State or branch aforesaid, all the moneys, which they now have or may hereafter receive, belonging to said sections, which may not be needed to defray the expenses of sale, and to pay contracts already entered into; and the officers of the bank shall open an account current in the books thereof, with such commissioners, for all money received from, or belonging in any way to their respective school funds, and the same shall, from the day of its reception in bank, bear an interest according to the provisions of this act, payable quarter-yearly; which interest may, by the said commissioners, be reinvested as principal, and shall again bear interest at the like rate, and payable also quarter-yearly, which interest shall, by said bank, be paid to said commissioners, quarter-yearly, on the demand of said commissioners, their agent or attorney, as the same may become due and payable, and which shall be applied by said commissioners, solely to the use of schools in the township to which such sections properly belong. The said commissioners shall not, in any case, diminish the capital stock of said township, and it shall be lawful for the president and directors of the Bank of the State, at any time, to issue to the commissioners of any sixteenth section which may be sold, and for which the moneys shall have been deposited in said bank, state stock, which shall bear interest, as herein above provided for, and the good faith and credit of the state are hereby forever pledged for the payment of the interest, and for the redemption of the principal stock issued as aforesaid; and, also, for all other moneys placed by said commissioners in the said bank.

Interest pay-  
able quarter-  
ly, and may  
be reinvested  
as principal.

Bank may  
issue state  
stock.

Faith and  
credit of the  
state pledg-  
ed.

*Ib. Sec. 21.*  
If not five  
qualified  
electors, who  
shall be com-  
missioners.

§ 25. If any township, having a sixteenth section of value, may not have five inhabitants, who would be qualified electors, then, any two freeholders or householders thereof, may perform the duties required of the school commissioners by this act.

*Ib. Sec. 22.*  
When pro-  
ceeds will  
not pay ex-  
pense of sale,  
commission-  
ers may ask  
per cent.  
thereon.

§ 26. When any sixteenth section shall have been sold, agreeably to the provisions of this act, and no money shall have been received by the commissioners, or a sum not sufficient to defray the expenses incident to such sale, it shall be competent for the commissioners to require the purchaser or purchasers to pay a per centum on the amount of sales, which per centum shall not, in the aggregate, exceed the expenses incurred.

*Ib. Sec. 23.*  
Per cent. to  
be paid at  
time of sale,  
&c.

§ 27. The per centum, hereby authorized, shall be paid at the time of sale by the purchaser, and shall be deducted from the original amount of the purchase-money.

*Ib. Sec. 24.*  
Unlawful  
detainer, to  
hold land be-  
yond time of  
lease or rent.

§ 28. If any person or persons, who may have leased or rented any sixteenth section from the commissioners thereof, or any person or persons, who may have rented or leased from such lessor, shall hold over, after the expiration of his or their term, he or they shall be guilty of an unlawful detainer, and may be proceeded against accordingly, by the person or persons entitled to the possession thereof: *Provided*, That the person or persons entitled to possession shall have made a demand in writing, for the possession of said land, at least ten days previous to the commencement of his action.

Proviso.

*Ib. Sec. 25.*  
Assignee of  
certificate of

§ 29. The assignee or assignees of any certificate of purchase of any sixteenth section lands, whether heretofore or hereafter made,



shall be entitled to a patent for the same, in his, her or their own names, in the same manner that original purchasers are: *Provided*, That every such assignment shall be acknowledged before some justice of the peace, and certified by him.

§ 30. Every purchaser, (or his executors or administrators,) of any parcel or lot of the sixteenth sections of this state, having lost or mislaid his certificate of purchase, shall, upon making affidavit of such loss before any judge or justice of the peace of the county in which the lot or parcel of land purchased is situated, have a duplicate certificate granted unto him by the school commissioners of the sixteenth section in which his lot or parcel of land is situated, of the same tenor and effect with the original certificate of purchase, and such duplicate certificate shall have the same force and effect as the original certificate of purchase.

§ 31. It shall be lawful for the people of any number of townships adjoining, in which the whole number of white children, male and female, residing therein, between the age of eight and eighteen years, shall not exceed forty, to unite their school funds under the control of the commissioners of all of said townships, in the same manner and for the same purpose, as if they were one township: *Provided*, That each township send a number of children in proportion to its respective fund contributed to the support of the school.

§ 32. Nothing contained in this law shall be so construed as to prevent the commissioners, elected or appointed in each township, from renting the same annually, until a sale can be effected at the minimum price; and the person renting the same shall not be interrupted in his possession until his contract expires.

§ 33. Whenever a sale of a sixteenth section, or any part thereof, has been, or may hereafter be effected, it shall be lawful for the commissioners to retain, out of the first moneys which shall come into their hands, either for rents due the township, or for interest accruing on the purchase-money of the sixteenth section, all expenses which they may have incurred in causing said section to be surveyed and laid out into lots: *Provided*, That the commissioners, or one of them, shall make affidavit before the judge of the county court, or some justice of the peace of the county where such section is situated, that such expenses were necessary and have actually been incurred, which affidavit, so taken, shall be filed in the office of the clerk of the county court.

§ 34. Whenever a sixteenth section may have been sold, and the commissioners thereof have received no money from the sale, and have forwarded the notes to the bank in pursuance of law, it shall be the duty of the cashier of said bank to pay any expenses for surveying and selling out said section, out of the proceeds of the first money received from the sales thereof, upon the account for such expenses in surveying and selling being fairly made out and certified by the whole of the commissioners of said section, to be just and unpaid, and that they have no funds of said section wherewith to pay said account.

§ 35. Where there is no school situated in any township, or where there may not be scholars enough to constitute a school in any township, it shall be the duty of the school commissioners of such township to apply the interest arising from the sale, or the moneys arising from the rent of their sixteenth section, annually, to the education of the scholars of such township, in equal proportion, at any other school not situated in such township, which shall be paid to the parent or guardian, upon the certificate of the teacher of such child or children.

purchase, entitled to patent.

*Ib. Sec. 27.*  
Certificate being lost or mislaid may be renewed.

*Ib. Sec. 28.*  
Any number of townships, not containing more than 40 children, may unite school fund.

1829—(13)  
*Sec. 1.*  
Commissioners may rent 16th sections until sale is effected.

1830—(13)  
*Sec. 8.*  
Commissioners may retain amount of expenses, out of proceeds of sale, provided they make oath, &c.

*Ib. Sec. 3.*  
Cashier to pay expenses of surveying, &c. when commissioners have no funds.

1832—(10)  
*Sec. 6.*  
Fund, how applied when there is no school in the township.



1840—(36)  
Sec. 1.  
Banks to pay  
8 per ct. in-  
terest on  
school funds.

§ 36. The Bank of the State of Alabama and its several branches, are hereby required to pay to the commissioners of the sixteenth sections, annually, eight per cent. interest and no more, upon the school funds deposited with them.

1840—(37)  
Sec. 1.  
Bank may  
give further  
time to town-  
ship debtors  
on recom-  
mendation of  
commission-  
ers.  
Proviso.

§ 37. It shall be lawful for the president and directors of the Bank of the State of Alabama, or of the proper branch thereof, on the recommendation of the commissioners of the proper township, in the collection of debts due or to become due on a sale of any sixteenth section, to give such further time of payment on such debts, as, in their opinion, the interest of the townships and of the purchasers of said sections respectively require: *Provided*, The title to land, sold as aforesaid, shall never be divested out of the township, until the final payment of the whole debt and interest: *Provided, also*, New notes shall be given by the applicant for extension, and the interest paid annually, as now required by law, according to such forms and under such regulations as said presidents and directors may pre- scribe.

*Ib. Sec. 2.*  
Com'rs may  
receive in-  
terest from  
purchasers.

§ 38. It shall be lawful for the commissioners of the several townships in this state, to receive the interest due from purchasers of sixteenth sections in this state, and receipt for the same, which receipts shall be good and sufficient evidence to the holder thereof, that said interest has been paid.

*Ib. Sec. 3.*  
This act to  
apply, when  
there is  
judgment.  
Proviso.

§ 39. The provisions of this act shall apply to all cases where judgments have been obtained, or where suits have been com- menced upon sixteenth section notes: *Provided*, That the parties to any such judgments or suits shall pay up all the costs, which shall have accrued upon the same, at the time of taking the benefit of this statute.

*Ib. Sec. 4.*  
Indulgence  
not to exceed  
4 yrs.

§ 40. The ultimate period of payment upon the notes or debts embraced in this statute, or any section thereof, shall, in no event, be extended beyond four years.

1840—(38)  
Sec. 1.  
Persons may  
send to  
school in ad-  
joining town-  
ship.

§ 41. It shall be lawful for any person to send to school in an adjoining township, where it is more convenient; and such person or persons, sending their children or wards to school, out of the township in which they may reside, may, nevertheless, draw their ratable proportion of the funds of the township in which they live; such persons are, however, required to furnish the certificate of the teacher to whom they send, to the commissioners of their own town- ship: *Provided*, The provisions of this act shall not apply to the county of Barbour.

Proviso.  
[1841—(33)  
Sec. 1.]

1836—(31)  
Sec. 1.  
Purchasers  
of 16th sec.  
may pay in  
advance.

§ 42. The purchasers of any sixteenth section lands in this state, are hereby authorized to pay their purchase-money, or any part thereof, in advance.

*Ib. Sec. 2.*  
Only to pay  
such interest  
as has ac-  
crued.

§ 43. It shall be the duty of commissioners of sixteenth sections, or cashiers of banks, (as the case may be,) to receive the same, free of interest, except such as may have previously accrued on said money.

1843—(50)  
Sec. 1.  
Not necessa-  
ry for certi-  
ficate of pur-  
chase to be  
acknow-  
ledged in  
open court,  
to entitle  
purchaser to  
patent.

§ 44. In all cases where sixteenth section lands have heretofore been sold, or may hereafter be sold, in pursuance of law, and the purchaser or purchasers of any portion thereof, or the legal holder, shall produce to the governor of this state, the certificate of purchase of the commissioners of such sixteenth section, together with the certificate of the president and cashier of the proper bank, that full payment has been made for the land mentioned in such certificate of purchase, a patent shall issue for the same; and it shall not be ne- cessary for the issuing of said patent, that the certificate of purchase



has been acknowledged in open court, or before a judge or justice of the peace.

§ 45. In all cases where commissioners of sixteenth sections have failed to establish schools in their respective townships, as now required by law, it shall be their duty, and they are hereby required, to pay over all such interest as may have accrued, or may hereafter accrue, until such schools shall be so established, to the children of their township, who have actually attended any other school in said township, in the same manner and under the same rules as are now provided for by law, for children going to established schools under their direction.

§ 46. When any commissioner or commissioners shall have drawn from bank any funds belonging to their respective townships, and have failed, or shall hereafter fail, to pay over the same as directed by law, with the legal interest thereon, from the time the same was received, on motion of any legal voter of the township, where the funds have, or may hereafter be withheld, in the regular orphans' court of his county, it shall be the duty of the judge to issue a citation forthwith, requiring said commissioner or commissioners to appear *instantly*, and show cause why judgment should not be entered against him or them and their securities, for said default.

§ 47. Upon the return of said citation, the judge of said court shall proceed to hear and determine the same, and give judgment, as the equity of the case may appear.

§ 48. Should the judge be of opinion that the commissioner or commissioners have failed or refused to comply with the law, he shall proceed to give judgment against the same, and his or their securities, with twenty per cent. as damages: *Provided*, Either party shall have the right of appeal to the circuit court, in accordance with the law, now regulating appeals.

§ 49. Whenever a sale has been made of a sixteenth section, or part thereof, and such sale cannot, by reason of the insolvency of the purchaser or purchasers, or from other cause, be made productive, a majority of the voters of said township, voting in township meeting, upon due notice given, shall have power, with the assent of the purchaser or purchasers, to annul or cancel the contract of sale for said section, or any lot or parcel thereof, which is not likely to be productive; and shall have power, furthermore, to re-sell, rent or lease the same, as if no sale had ever been made: *Provided*, That no money shall be paid back to the first purchaser or purchasers, whose contract shall be canceled by virtue of this act.

§ 50. In all cases, whenever any person shall have purchased, or be the holder of any sixteenth section lands, and shall have died before complete payment is made for the same, or before a patent shall be obtained, it shall be lawful for the governor, and it is hereby made his duty, to grant a patent or patents to the heirs of such decedent, without designating them by name: *Provided*, He shall be satisfied, that full and complete payment has been made for the lands so purchased or held: *Provided*, That the lands, in such cases, shall be liable to the creditors of the ancestor, in the same manner as if titles had been perfected during his or her life.

§ 51. All lands, granted by patent as provided for by this act, shall inure to such heirs, in the same way as though they had been particularly designated by name, and shall be subject to be disposed of, in the same way as if the same had descended from a complete title in the ancestor.

1843—(51)

Sec. 1.  
To whom  
commission-  
ers, failing  
to establish  
schools in  
townships,  
shall pay  
over the in-  
terest accru-  
ing.

Ib. Sec. 2.

On failure of  
commission-  
er to pay  
over, & mo-  
tion of legal  
voter of  
township,  
duty of judge  
of orphans'  
court to issue  
citation, &c.

Ib. Sec. 3.

Duty of  
judge on re-  
turn of cita-  
tion.

Ib. Sec. 4.

If commis-  
sioners have  
failed to  
comply with  
law, judge  
shall give  
judgment *vs.*  
them.

Proviso.

1843—(52)

Sec. 1.

If sale of 16th  
sec. prove  
unproduc-  
tive, voters  
of town-  
ships, with  
consent of  
purchasers,  
may annul  
contract, &  
re-sell, rent  
or lease.

Proviso.

1843—(53)

Sec. 1.

If a purchas-  
er of 16th  
sec. lands die  
before pay-  
ment made  
or patent ob-  
tained, gov-  
ernor to  
grant patent  
to heirs.

Provisos.

Ib. Sec. 2.

Complete  
title thereby  
vested in  
heirs.



*Ib. Sec. 3.*  
Like provisions extended to all purchases of 16th section lands.

§ 52. The governor shall have like power to make title, in all cases of purchases of sixteenth section lands, whenever proper evidence is furnished him, of a total payment having been made for the same.

## SEAL OF THE STATE.

*Con. Ala.*  
*Art. 4.*  
*Sec. 12.*  
Territorial seal adopted.

§ 1. THERE shall be a seal of this state, which shall be kept by the governor, and used by him officially; and the present seal of the territory shall be the seal of the state, until otherwise directed by the general assembly.

## SECRETARY OF STATE.

*Con. Ala.*  
*Art. 4.*  
*Sec. 14.*  
Secretary's appointment and duties.

§ 1. THERE shall be a secretary of state appointed by joint vote of both houses of the general assembly, who shall continue in office during the term of two years. He shall keep a fair register of all official acts and proceedings of the governor, and shall, when required, lay the same, and all papers, minutes, and vouchers relating thereto, before the general assembly; and shall perform such other duties as may be required of him by law.

1807—(28)  
*Sec. 1.*  
Secretary of state to keep records at seat of government.  
*Ib. Sec. 2.*  
Persons detaining public records, subject to a forfeiture of \$3000.

§ 2. The secretary of state, for the time being, shall keep the public records and documents belonging to his office, at the place designated by law for the sitting of the general assembly.

§ 3. If any person or persons possessed of any of the records and public documents belonging, or in any manner appertaining to the government of this state, which, by the laws of the United States, and ordinance for the government of this state, they may not have a right to retain, shall, on the application of the governor of this state, who is hereby authorized to demand and receive the same, refuse to deliver such records and public documents, the person or persons, so refusing, shall forfeit and pay the sum of three thousand dollars.

*Ib. Sec. 3.*  
Attorney-general to prosecute such offenders.

§ 4. It shall be the duty of the attorney-general of this state, and he is hereby required, to prosecute and recover, in the name of the governor for the time being, for the use of the state, all such sums as may become forfeited under this act.

1819—(9)  
*Sec. 4.*  
Secretary of state to perform the duties of territorial secretary.

§ 5. The secretary of state shall, in addition to the duties prescribed by the constitution of this state, perform all the duties heretofore appertaining to the office of territorial secretary, and shall be entitled to receive, in addition to the salary established by law, the compensation allowed for copying the laws and superintending the printing thereof: and, also, the sum of one dollar for every certificate and the annexation of the seal of the state thereto, which may be required by any person or persons, to any instrument, relating to contracts or other matters of private concern, to be paid by the party applying for the same.

*Fees.*

NOTE.—It is the duty of the secretary of state to report to the solicitors, county officers, who have failed to give official bonds,—See "Clerks of the Circuit and County Courts," § 30, 31 and 32.



## SECURITIES.

§ 1. In case the security to any replevin bond shall become dissatisfied, in consequence of the principal to said bond being about to remove out of the state, or shall be about to remove his or her property out of the county, or be wasting the same, such security, his agent, or attorney, making oath thereof before any justice of the county in which the principal to said bond resides, shall have a right to demand collateral security; and in case the principal shall fail to give the same, within five days after notice of such oath having been made, to be approved of by the clerk of the proper court or justice of the peace, as the case may be, the security, his agent, or attorney, shall have power to take out execution on such bond, in favor of the plaintiff in such action, and it shall be the duty of the sheriff, or constable, as the case may be, to execute the same according to law: *Provided*, The defendant in execution may, at any time previously to the day of sale, enter the collateral security required, with the clerk of the court of the county from which such execution emanated, or justice of the peace, upon payment of all costs that may have accrued, and further proceedings thereon shall be stayed, until the original stay expires.

1814—(8)  
Security in replevin bond may require collateral security, on the principal removing himself, &c. If not given, security may take out execution.

§ 2. Every bond, taken, in virtue of this act, from the principal obligor to any replevin bond with collateral security, shall, when due, have the force and effect of a judgment, and execution may issue as well against such collateral security as against such obligor and his first security, for the moneys mentioned in such replevin bond, and the costs that may accrue in giving the collateral security required.

All bonds under this act, to have the force of judgments.

§ 3. In all cases where judgment shall be entered up in any court of record, or by any justice of the peace, against any person or persons as security or securities, their executors or administrators, upon any note, bill, bond, or obligation, and in all cases where execution shall be awarded by, or issued from, any of the courts of record, or any justice of the peace, against any person or persons as security or securities, his, her, or their heirs, executors, or administrators, upon any bond, obligation, or recognizance, and the amount of such judgment or obligation, or any part thereof, hath been paid or discharged by such security or securities, his, her, or their heirs, executors, or administrators, it shall be lawful for such security or securities, his, her, or their heirs, executors, or administrators, to obtain judgment by motion against such principal obligor or obligors, recognizer or recognizers, his, her, or their heirs, executors, or administrators, in any court, or before any justice of the peace, where such judgment may have been entered up and execution awarded against such security or securities, his, her, or their heirs, executors, or administrators, for the full amount which shall have been paid, with interest thereon from the time the same shall have been paid, and satisfied, until such judgment shall be discharged.

1821—(26)  
Sec. 1.  
Securities paying money on judgment, execution, &c. may have judgment against the principal by motion.

Interest allowed.

§ 4. When the principal obligor or obligors, recognizer or recognizers, shall become insolvent, and there shall be two or more securities jointly bound with the said principal obligor or obligors, recognizer or recognizers, in any bond, bill, note, recognizance, or other obligation for the payment of money or other thing, and judgment shall be obtained, and execution awarded and issued against one or more of such securities, or his or their legal representatives, it shall be lawful for the court, or justice of the peace, before whom judg-

Tb. Sec. 2.  
Security may have judgment on motion against co-security for his proportion of the debt.



ment and execution shall be obtained, upon motion of the party or parties, his or their legal representatives, against whom judgment hath been entered up and execution awarded and issued, as securities aforesaid, to grant judgment and award execution against all and each of the obligors and recognizers, and their legal representatives, for their and each of their respective shares and proportions of the said debt or damages.

*Ib. Sec. 3.*  
Securities not to confess judgment, &c. if principal will tender collateral security.

§ 5. No security or securities, his, her, or their executors or administrators, shall be suffered to confess judgment, or suffer judgment to go by default, so as to distress his, her, or their principal or principals, if such principal or principals will enter him, her, or themselves as defendant or defendants to the suit, and tender to the said security or securities, his, her, or their executors or administrators, other good and sufficient collateral security, to be approved of by the court before whom the suit shall be pending.

*Ib. Sec. 5.*  
Securities may require principal to be sued, by giving a written notice.

§ 6. When any person or persons shall become bound as security or securities by bond, bill, or note, for the payment of money or any other article, and shall apprehend that his or their principal or principals is or are likely to become insolvent, or to migrate from this state without previously discharging any such bond, bill, or note, it shall be lawful for such security or securities, in every such case, (provided an action shall have accrued on such bond, bill, or note,) to require, by notice in writing, of his or their creditor or creditors, forthwith to put the bond, bill or note, by which he or they may be bound as security or securities, as aforesaid, in suit; and unless the creditor or creditors, so required to put such bond, bill, or note in suit, shall, in a reasonable time, commence an action on such bond, bill, or note, and proceed, with due diligence in the ordinary course of law, to recover judgment for, and by execution to make, the amount due by such bond, bill, or note, the creditor or creditors, so failing to comply with the requisition of such security or securities, shall thereby forfeit the right, which he or they otherwise would have had, to demand and receive of such security or securities, the amount which may be due by such bond, bill, or note.

Creditors failing, securities discharged.

*Ib. Sec. 6.*  
Benefit of the act extended to executors, &c.

§ 7. Any security or securities, his or their executors or administrators, may, in like manner, and for the same cause, make such requisition of the executors or administrators of the creditor or creditors; and, in case of the failure of the executors or administrators to proceed, such requisition as aforesaid being duly made, the security or securities, his, her, or their executors or administrators making the same, shall have the same relief that is hereinbefore provided for a security or securities, where his or their creditor or creditors shall be guilty of a similar failure: *Provided*, That nothing, in the last two sections contained, shall be so construed as to affect bonds with collateral conditions, or the bonds that may be entered into by guardians, executors, administrators, or public officers; *And provided, also*, That the rights and remedies of any creditor or creditors, against any principal debtor or debtors, shall be in nowise affected thereby.

Not to affect bonds with collateral conditions, &c., nor creditors' rights against principal debtor.

1828—(27).  
*Sec. 1.*  
Security sued, may notify principal, & obtain judgment, in same manner as though he had paid the debt.

§ 8. In all suits against any person or persons as security on any bill, note, bond, covenant, or other instrument in writing whatsoever, for the payment of money or property, or the performance of any duty, it shall be lawful for such person or persons being such security, to notify his, her, or their principal or principals, (as the case may be,) of the pendency of the suit; and it shall be the duty of the court or justice of the peace, before whom the suit is to be tried, on proof being made at the trial, that notice has been given to



the principal or principals, and that the party or parties sued, is the security of said principal or principals, to enter judgment against the principal or principals in favor of the security, for the full amount of the judgment and costs which shall have been recovered against his, her, or their security; upon which judgment the party or parties being security, shall have execution against his, her, or their principal or principals, in the same manner as if the debt had been paid by such security.

§ 9. If any person or persons, who may have executed any note or notes payable to the president and directors of the Bank of the State of Alabama, "or any of the branches thereof, as security or securities, shall pay the same after it shall have been protested for non-payment, such security or securities shall have the same summary remedy against the principal in such note, as is now provided by law in favor of said bank, for the recovery of any sum or sums so paid by such security or securities, and costs of protest; and the certificate of the president of said bank, of the payment so made by such security or securities, shall be sufficient evidence of such payment.

1830—(16)  
Sec. 1.  
Bank securities on notes paying after protest, to have the same process as the bank, against the principal.  
[a 1833—(18)  
Sec. 1.]

§ 10. If any person or persons, who may be bound for the payment of any bill of exchange, the property of the Bank of the State of Alabama, "or any of the branches thereof, shall pay the same after it shall have been protested for non-payment, the person or persons, so paying such bill, shall have the same summary remedy against the drawer, acceptor, or any previous endorser, of such bill or any one of them, as is provided by the first section of this act in favor of the securities of notes against the principals, for the sum paid on such bill, and all costs and damages occasioned by protest; and the certificate of the president of said bank, of the payment of any such bill by any such person or persons, shall be sufficient evidence of such payment.

*Ib.* Sec. 2.  
Endorsers of bills entitled to similar remedy against drawer, &c.  
[b 1833—(18)  
Sec. 1.]

§ 11. The remedy, by this act provided, shall be had in any court having competent jurisdiction, either in the county where the said bank may be located, or in the county of the residence of the defendant or defendants, or either of them.

*Ib.* Sec. 3.  
Remedy where the bank is located, or where defendant resides.  
1839—(34)  
Sec. 1.

§ 12. When any suit may be pending in any of the circuit or county courts, or before any justice of the peace in this state, against any person who may be a surety to any bill, note, bond, covenant or other instrument in writing whatever, if there be a co-surety or sureties not sued, it shall be lawful for such person thus sued, to notify in writing his co-surety or sureties, or either or any of them, of the pending of the suit; and it shall be the duty of the court or justice of the peace, before whom the said suit is to be tried, on proof being made at the trial, that notice in writing has been given to said co-surety or sureties, and that said parties are sureties, to enter up judgment in favor of the surety sued, against such co-surety or sureties, each thus notified as aforesaid, for the proportion of said debt or demand, with costs, which such co-surety or sureties should pay; that is to say, in case there is but one co-surety, then judgment shall be rendered in favor of the surety sued, for one half of said debt or demand, and costs; if there are two co-sureties of the person sued, then for one third; and at that rate, according to the number of co-sureties: *Provided, however,* That, if any of said co-sureties are insolvent, the surety thus sued as aforesaid, may, on said motion to be made as above, recover a judgment against said co-surety or sureties,

A security, when sued, may give his co-security notice, and obtain judgment against him for his proportion.



thus to be notified the proportion which such co-surety or sureties should pay, if such insolvent co-surety or sureties were not bound for said debt or demand.

NOTE.—How securities may compel the sheriff, &c., to levy on property of principal first,—See “Executions,”—§ 23.

## SECURITIES OF OFFICERS.

1822—(30)  
Sec. 1.  
On application of securities of officer, judge of county court may require new bond.

§ 13. It shall be the duty of the judge of the county court, whenever application shall be made to him by the security or securities, or either of them, of any clerk or sheriff, or other officer of any county in this state, to issue a citation to the said clerk, sheriff, or other officer, to appear before him on some day therein named, not less than ten, nor more than fifteen days, then and there to enter into a new bond, with good and sufficient securities, for the faithful execution of the duties of his office.

*Ib.* Sec. 2.  
New bond being given, securities discharged. Proviso.

§ 14. Upon the execution of such new bond by the said clerk, sheriff, or other officer, the security or securities, making application, shall be discharged from the obligation of the bond previously entered into by them: *Provided*, That nothing, herein contained, shall discharge the security or securities from any liability which they had before that time incurred.

*Ib.* Sec. 3.  
On officer's refusal, judge to declare the office vacant.

§ 15. If any clerk, sheriff, or other officer, being duly served with a citation as aforesaid, shall fail or refuse to give the bond required as aforesaid, it shall be the duty of the judge of the county court to decree the office of the said clerk, sheriff, or other officer, to be vacated; and shall cause an entry thereof to be made upon the records of the county court; and such vacancies shall be filled as now prescribed by law.

1824—(31)  
Sec. 1.  
Securities of judge of county court may apply to circuit judge for a citation against him.

§ 16. It shall be the duty of any judge of the circuit court, whenever application shall be made to him by the security or securities, or either of them, of any judge of the county court of any county in this state, to issue a citation to the said judge of the county court to appear before him on some day therein named, not less than ten nor more than thirty days, then and there to enter into a new bond, with good and sufficient securities, for the faithful execution of the duties of his office.

*Ib.* Sec. 2.  
Former securities discharged.

§ 17. Upon the execution of such new bond by the judge of any county court, the security or securities, making application, shall be discharged from the obligation of the bond previously entered into by them: *Provided*, That nothing, herein contained, shall discharge the security or securities from any liability which they had before that time incurred.

*Ib.* Sec. 3.  
On failure to give bond, circuit judge to certify vacancy to the governor.

§ 18. If any judge of the county court, being duly served with a citation as aforesaid, shall fail or refuse to give the bond as required by this act, it shall be the duty of the judge of the circuit court to certify the same to the governor, which shall be evidence of a vacancy, and the same shall be filled as now prescribed by law.

NOTE.—For the time within which suits must be instituted against the securities of public officers,—See “Judicial Proceedings at Common Law—Limitation.”



## SHERIFFS.

§ 1. A SHERIFF shall be elected in each county by the qualified electors thereof, who shall hold his office for the term of three years, unless sooner removed, and who shall not be eligible to serve either as principal or deputy for the three succeeding years. Should a vacancy occur subsequent to an election, it shall be filled by the governor as in other cases, and the person so appointed shall continue in office until the next general election, when such vacancy shall be filled by the qualified electors, and the sheriff then elected shall continue in office for three years.

Con. Ala.  
Art. 4.  
Sec. 24.  
Sheriffs, how  
elected: term  
of service;  
qualification  
vacancies,  
how filled.

§ 2. The duties of a sheriff shall be, to keep the peace, by causing all offenders against law, in his view, to enter into recognizances, with sureties, for keeping the peace, and appearing at the next circuit or superior court, to be holden in the same county, and to commit, in case of refusal; which recognizances shall, by the said sheriff, be returned and certified before the said court. It shall also be his duty to quell and suppress all affrays, routs, riots, and insurrections: for which end he is hereby empowered to call to his aid the power of the county. He shall pursue, apprehend, and commit to jail, all felons and traitors: he shall execute all warrants, writs, and other process, which by law shall appertain to the duties of his office, and which shall be directed to him by legal authority. He shall duly attend upon all the courts of record, at their respective terms, or sessions, in his county.

1807—(30)  
Sec. 1.  
Duties and  
powers of  
sheriff.

§ 3. The sheriffs of the different counties shall be sheriffs of the circuit courts within their respective counties; and the sheriff of the county, in which the supreme court shall be holden, shall also be sheriff of the said supreme court.

1819—(6)  
Sec. 10.  
Sheriff of  
circuit and  
supreme  
court.

§ 4. All sheriffs, elected or appointed under the constitution of this state, shall, before entering on the duties of their office, give bond, with such number of good and sufficient securities, as may be approved of by the county courts, respectively, in such sum as they may deem necessary and proper, "not less than four thousand dollars, payable to the governor for the time being, and his successors in office, which bond shall be taken by said court, and deposited in the clerk's office: <sup>1</sup> *Provided*, That it shall be the duty of the sheriff to renew his bond annually, if required by the county court.

1822—(13)  
Sec. 4.  
Sheriffs to  
give bond.

§ 5. Any sheriff, failing or neglecting to comply with the provisions of the preceding section, shall vacate his office, and said office is hereby declared vacated; and such vacancies, should any such occur, shall be filled in such manner as is now prescribed by the constitution, for supplying vacancies for sheriffs. (1)

[a 1807—(30)  
Sec. 1.]

Id. Sec. 5.  
Failing, his  
office vaca-  
ted.

§ 6. When the officer, whose duty it is to hold an election for sheriff in any county, shall fail to do the same at the time prescribed by law, it shall be the duty of the governor, or the person exercising the duties of his office, to issue his writ of election, directed to any person residing in the county, whom he may appoint, directing the person, to hold an election for the purpose of electing a sheriff for the county, at the place or places prescribed by law for holding elections for representatives for the county, at any time he may appoint;

1822—(22)  
Sec. 1.  
When an  
election for  
sheriff has  
not been  
held at the  
proper time,  
governor to  
issue writ of  
election.

<sup>1</sup> See "County Officers,"—§ 11 to 15.

(1) Statutes in relation to sheriff's liabilities and bonds construed. *McWhorter et al. v. McGehee*, 1 *Stewt. Rep.* 546.



Thirty days' notice to be given. requiring at least thirty days' notice, to be given by advertisement posted up at four of the most public places in the county, of the time of holding said election.

*Ib. Sec. 2.*  
Polls to be kept open agreeably to law.

*Ib. Sec. 3.*  
Clerks and judges of the elections.

*Ib. Sec. 4.*  
Person elected to be commissioned by governor.

1826—(17)  
*Sec. 5.*  
Sheriff's office vacant, coroner may perform the duties.

1828—(46)  
*Sec. 1.*  
When judgment is rendered against a sheriff for the default of his deputy, he may have judgment against such deputy and his securities on motion.

1841—(34)  
*Sec. 1.*  
When there is a tie between the two highest candidates for sheriff, the acting sheriff to advertise another election, to be held thirty days thereafter.

*Ib. Sec. 2.*  
Acting sheriff to continue until sheriff is elected.

1841—(35)  
*Sec. 1.*  
In motions, &c. against

§ 7. At the election hereby authorized to be held, the polls shall be opened, and kept open, agreeably to the law now regulating elections in the county in which it shall be held.

§ 8. The clerks and judges, who shall superintend the election hereby authorized, shall be appointed by the person to whom the commission shall be directed, who shall be authorized to administer the oaths to said clerks and judges, as are required to be administered to clerks and judges at the general elections.

§ 9. The person, who shall be returned duly elected, by the person to whom the writ of election is directed, shall be commissioned as sheriff, by the governor, or the person exercising the duties of his office.

§ 10. Whenever the office of sheriff, in any county, shall become vacant, it shall be lawful for the coroner of said county to perform all the duties imposed by law upon the sheriffs of the several counties, under all the penalties and liabilities created by law for a violation or neglect of duty by the several sheriffs.

§ 11. Whenever judgment shall be rendered by any court of this state against any sheriff for any failure, neglect of duty, or misconduct in office, and it shall appear to the satisfaction of the court that such failure, neglect of duty, or misconduct in office, is the failure, neglect, or misconduct of his deputy, it shall be the duty of the court, on motion of the sheriff, to render judgment against such deputy and securities in favor of the principal sheriff, for the whole amount of the judgment and costs rendered by the court against such principal sheriff, by reason of such failure, neglect of duty, or misconduct, of said deputy; for which execution may issue as in other cases: *Provided*, That the deputy, or his security or securities, shall have one day's notice of the pendency of the proceedings against the principal sheriff.

§ 12. Whenever, at any general election in any county in this state, there may have been no election of a sheriff, by reason of an equal number of votes between the two highest candidates for said office, the acting sheriff shall forthwith advertise, at the various precincts in his county, that an election for sheriff will be held thirty days thereafter, specifying the day on which the election will be held; at which time he shall proceed to hold said election, in the manner now required by law for holding elections, and the person, receiving the highest number of votes, shall, (after executing the necessary bond and taking the oaths of office,) be deemed and held as the sheriff of said county, for the term of three years from the last general election; and if, at said election, there be an equal number of votes between the two highest candidates, the acting sheriff shall continue to hold an election for said office, from time to time, (always giving thirty days' notice,) until a sheriff is elected.

§ 13. Whenever there is no election for sheriff, as contemplated in the first section of this act, the then acting sheriff of the county shall, and he is hereby authorized and required, to perform all the duties pertaining to the said office of sheriff, until a sheriff is duly elected, in the manner required by the first section of this act.

§ 14. Where a rule or notice shall issue against any late or acting sheriff, and his securities in office, in any case now authorized by law, it shall be competent for the plaintiffs in such rule or notice, to



recover judgment, against such of the parties as service may have been effected on.

NOTE. It is unlawful for a sheriff, or any other county officer, to deal, directly or indirectly, in certificates of witnesses or jurors, or other evidences of charges against their respective counties. See "Clerks of the Circuit and County Courts," § 35.

sheriff, judgment to be rendered against all parties served with notice.

## SHIPS, AND SEAMEN.

§ 1. If any seaman or mariner, who shall have signed a contract to perform a voyage in any ship or vessel, shall, at any place within this state, desert or absent himself from such ship or vessel, without leave of the master, or officer commanding in the absence of the master, it shall be lawful for any justice of the peace, upon complaint under oath, to issue his warrant to apprehend such deserter, and bring him before such justice; and if it shall appear by due proof that he has signed a contract to perform a voyage as aforesaid, and that such voyage is not finished, altered, or the contract otherwise dissolved, and that such seaman has deserted the vessel, or absented himself without leave, the said justice shall commit him to the house of correction, or common jail, there to remain until the said vessel shall be ready to proceed on her voyage, or till the master shall require his discharge, the master paying all costs and expenses.

1823—(34)  
Seamen deserting, may be committed by justice of the peace, until the vessel is ready to proceed on her voyage, or they are discharged by the master.

§ 2. If a person shall harbor or secrete any seaman or mariner belonging to any ship or vessel, knowing him to belong thereto, every such person, on conviction thereof, before a justice of the peace, shall forfeit and pay ten dollars for every day which he, she or they shall continue so to harbor or secrete such seaman or mariner, to be sued for in the name of the state, to the use of the person prosecuting for the same.

Persons harboring seamen, liable to forfeiture of \$10 per day.

§ 3. Every constable, who may apprehend any seaman or mariner who has deserted or left his vessel as aforesaid, shall receive the sum of five dollars as his fees for such apprehension.

Constable allowed \$5 for apprehending seamen.

§ 4. No master of any vessel, within this state, shall hire, receive, or ship, any seaman, or person belonging to, and pretending to be discharged from any other vessel, unless such seaman or person shall have a certificate of his discharge, signed by the master or officer commanding such vessel, or shall produce other satisfactory testimony of his discharge to some justice of the peace, whose certificate shall be received in lieu thereof; and any person, who may contravene the provisions of this act, shall forfeit and pay the sum of fifty dollars, to be recovered in any court having jurisdiction thereof, one half to the use of the informer, and the other half to the use of the poor of the county in which suit may be instituted.

Masters of vessels not to employ or receive seamen without certificate of discharge.

Penalty, and how appropriated.

§ 5. All ships, vessels, steam-boats, and other registered, enrolled, or licensed craft, built, repaired, fitted, or furnished within this state, are hereby declared to be liable and chargeable for all debts contracted by the owners, masters, or consignees thereof, for or by reason of any work done, or materials or supplies found, provided, or furnished by any merchant, trader, ship-builder, mechanic, or workman, for, upon, or concerning the building, repairing, fitting, furnishing, supplying or equipping such ship, vessel, steam-boat, or other craft, in preference to any other debts due and owing from the owners thereof.

1824—(34)  
Sec. 1.  
Ships, and other enrolled vessels, liable for certain debts contracted by their owners, &c.



*Ib. Sec. 2.*  
Creditors  
may file pro-  
cess in the  
nature of a  
libel.

§ 6. It shall be lawful for all and every of the said merchants, traders, ship-builders, mechanics, and workmen, to file process in the nature of a libel in admiralty proceedings, in the circuit and county courts in this state, against such ship, vessel, steam-boat, or other craft, her tackle, apparel, and furniture; whereupon, process shall issue, and such proceedings shall be had towards the recovery of such debts as are usually had in the courts of admiralty for the recovery of mariners' wages, and other debts actually contracted upon the high seas.

*Ib. Sec. 3.*  
Different  
creditors  
may sue  
jointly, and  
the court  
may consoli-  
date all suits  
separately  
brought.

§ 7. All or any of the said merchants, traders, ship-builders, mechanics, or workmen, to whom such ship, vessel, steam-boat, or other craft may be indebted, may join in one suit for the recovery of all their debts; and if more than one such be brought, the court may consolidate the same into one, and give one definitive judgment and decree, comprehending all such debts as shall be demanded by all or any of the merchants, traders, ship-builders, mechanics, or workmen as aforesaid, and duly supported, either by the process in nature of a libel, as aforesaid, or by petition to the court, while one or more of such suits shall be pending.

*Ib. Sec. 4.*  
Owner may  
release ves-  
sel by giving  
security.

§ 8. If, on the issuing of process, or filing of such petition as aforesaid, the master or owner of such ship, vessel, steam-boat, or other craft, or his or their agents or attorneys, shall enter into stipulation or bond, with sufficient securities, to answer all the demands aforesaid, which shall be filed against such ship, vessel, steam-boat, or other craft, the same shall be released and discharged from such lien.

*Ib. Sec. 5.*  
Lien to con-  
tinue only  
till first voy-  
age.

§ 9. No ship, vessel, steam-boat, or other craft, shall continue to be liable for such debts, to the merchants, traders, ship-builders, mechanics, and workmen, as aforesaid, longer than the time which shall intervene between the contracting of such debts and the time of her proceeding on her voyage, next after such debts may be contracted.

*Ib. Sec. 6.*  
Issues may  
be tried by a  
jury.  
Power of  
clerks of  
courts.

§ 10. All issues, at the request of either party, shall be tried by a jury; and all such issues shall be made up by the parties under the direction of the court; and in vacation, the clerks of the aforesaid courts shall have and exercise the same powers as clerks of the district and circuit court of the United States are vested with, by the acts of congress, in suits and libels, for the recovery of mariners' wages, and other debts actually contracted on the high seas; and shall proceed in the same manner. And the said clerks shall take the bonds or stipulations, as aforesaid; which bonds or stipulations shall not be void for want of form, but shall be proceeded on and recovered, according to the plain intent and meaning thereof: *Provided*, That nothing, in this act contained, shall be construed to extend to any keel-boat or barge, engaged in the navigation of the Mobile, Alabama, or Tombeckbee rivers, or their tributaries.

Bonds not  
void for want  
of form.

This act not  
to include  
barges, on  
certain riv-  
ers.

## SLANDER OF FEMALES.

1839—(33)  
What words  
against fe-  
males are ac-  
tionable.

§ 1. ALL words, spoken and published of any female person of this state, falsely and maliciously imputing to such female a want of chastity, shall, by the several courts of this state, having jurisdiction



thereof, be deemed and held actionable in themselves, without any averment or proof of special damages, and the person or persons injured may maintain an action thereon, as in other cases of slander.

## SLAVES, AND FREE PERSONS OF COLOR.

§ 1. THE general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to this state, from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state: *Provided*, That such person or slave be the *bona fide* property of such emigrants; *And provided, also*, That laws may be passed to prohibit the introduction into this state, of slaves, who have committed high crimes in other states or territories. They shall have power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have full power to prevent slaves from being brought into this state as merchandise, and also, to oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injuries to them extending to life or limb, and, in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of the owner or owners.

§ 2. In the prosecution of slaves for crimes of a higher grade than petit larceny, the general assembly shall have no power to deprive them of an impartial trial by a petit jury.

§ 3. Any person, who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection of such slave.<sup>1</sup>

§ 4. No slave shall be admitted a witness against any person, in any matter, cause, or thing whatsoever, civil or criminal, except in criminal cases, in which the evidence of one slave shall be admitted for or against another slave.<sup>a</sup>

§ 5. No slave shall go from the tenement of his master or other person with whom he lives, without a pass, or some letter or token, whereby it may appear that he is proceeding by authority from his master, employer, or overseer; if he does, it shall be lawful for any person to apprehend and carry him before a justice of the peace, to be by his order punished with stripes, or not, at his discretion, not exceeding twenty stripes.

§ 6. If any slave shall presume to come and be upon the plantation of any person whatsoever, without leave in writing from his or her owner or overseer, not being sent upon lawful business, it shall be lawful for the owner or overseer of such plantation, to give or order such slave ten lashes on his or her bare back, for every such offence.

Con. Ala.  
Art. 6.  
(Slaves.)  
Sec. 1.  
Powers of  
the general  
assembly in  
relation to  
slaves.

Sec. 2.  
Trial for  
crimes.

Sec. 3.  
Dismember-  
ing or killing  
slave.

1805—(4)  
Sec. 1.  
Slave not to  
be a witness  
except in  
trial of slave.  
a See post,  
§ 36.

Ib. Sec. 2.  
Slaves not to  
go from  
home with-  
out a pass,

Ib. Sec. 3.  
nor upon the  
plantation of  
any person  
without  
leave in  
writing.

<sup>1</sup> See "Penal Code," chap. 3, § 5.



*Ib. Sec. 4.*  
Slaves not to  
carry weap-  
ons, offen-  
sive or de-  
fensive.

Weapons  
forfeited to  
the seizer  
thereof.

May be  
licensed to  
carry gun  
within their  
owner's  
farm, with  
owner's con-  
sent.

*Ib. Sec. 5.*  
Penalty on  
persons per-  
mitting  
slaves, not  
their own, to  
remain on  
their planta-  
tions.

*Ib. Sec. 6.*  
Riots, &c.,  
by slaves,  
punished  
with stripes.

*Ib. Sec. 7.*  
Penalty on  
white person  
for attending  
unlawful  
meeting.

*Ib. Sec. 8.*  
Powers of  
justices of  
the peace in  
case of such  
unlawful  
meetings.

§ 7. No slave shall keep or carry any gun, powder, shot, club, or other weapon whatsoever, offensive or defensive, except the tools given him to work with, unless he is ordered by his master, mistress, or overseer, to carry the said articles from one place to another; but all and every gun, weapon, or ammunition, found in the possession or custody of any slave, may be seized by any person, and, upon due proof made thereof, before any justice of the peace of the county or corporation where such seizure shall be made, shall, by his order, be forfeited to the seizer, to his own use; and moreover, every such offender shall receive, by order of such justice, any number of lashes not exceeding thirty-nine, on his bare back, for every such offence: *Provided*, That any justice of the peace may grant, in his proper county, permission in writing to any slave, on application of his master or overseer, to carry and use a gun and ammunition within the limits of his said master's or owner's plantation, for a term not exceeding one year, and revocable at any time within such term, at the discretion of said justice.

§ 8. And to prevent the inconveniences arising from the meeting of slaves: *Be it enacted*, That if any master, mistress, or overseer of a family shall knowingly permit or suffer any slave not belonging to him or her, to be and remain in or about his or her house or kitchen, or upon his or her plantation, above four hours at any one time, without leave of the owner or overseer of such slave, he or she, so permitting, shall forfeit and pay ten dollars for every such offence; and every owner or overseer of a plantation, who shall so permit or suffer more than five negroes or slaves, other than his or her own, to remain upon his or her plantation or quarter at any one time, shall forfeit and pay ten dollars for each negro or slave above that number, which said several forfeitures shall be to the informer, and recoverable with costs, before any justice of the peace of the county or corporation where such offence shall be committed: *Provided*, That nothing, herein contained, shall be construed to prohibit the negroes or slaves of one and the same owner, though seated at different quarters, from meeting with their owner's or overseer's leave upon any plantation to such owner belonging, nor to restrain the meeting of slaves, on their owner's or overseer's business, at any public mill; nor to prohibit their meeting on any other lawful occasion, by license in writing from their owner or overseer, nor their going to church, and attending divine service on the Lord's day, and between sun-rising and sunset.

§ 9. Riots, routs, unlawful assemblies, trespasses, and seditious speeches, by a slave or slaves, shall be punished with stripes, not exceeding thirty-nine, at the discretion of a justice of the peace; and he, who will, may apprehend and carry him, her, or them, before such justice.

§ 10. If any white person, free negro or mulatto, shall at any time be found in company with slaves, at any unlawful meeting, such person, being thereof convicted before any justice of the peace, shall forfeit and pay twenty dollars for every such offence, to the informer, recoverable with costs before such justice.

§ 11. Every justice of the peace, upon his own knowledge of such unlawful meeting, or information thereof to him made within ten days after, shall issue his warrant to apprehend the persons so met or assembled, and cause them to be brought before him, or some other justice of his county or corporation, to be dealt with as this act directs; and every justice, failing herein, shall forfeit and pay ten dollars for every such failure; and every sheriff or other officer, who



shall fail, upon knowledge or information of such meeting, to endeavor to suppress the same, and bring the offenders before some justice of the peace to receive due punishment, shall be liable to the like penalty of ten dollars; both which penalties shall be to the informer, and recoverable with costs, by action of debt, in any county or corporation court; and every under-sheriff, or constable, who, upon knowledge or information of such meeting, shall fail to perform his duty in suppressing the same, and apprehending the persons so assembled, shall forfeit and pay ten dollars for every such failure, to the informer, recoverable with costs, before any justice of the county or corporation wherein such failure shall be.

§ 12. If any master or owner of a slave, shall license such slave to go at large and trade as a freeman, the master or owner shall forfeit and pay the sum of fifty dollars, one moiety to the use of any person suing for the same, and the other moiety to the use of the state; and if, after conviction, such slave shall be found so going at large and trading, the master or overseer shall again be liable to the like penalty, to be recovered as aforesaid, and so, as often after conviction as such slave shall be found so going at large and trading.

§ 13. If any person shall permit his or her slave to go at large, or hire him or herself out, every person or persons, so offending, shall forfeit and pay to the use of the state, the sum of fifty dollars; and it shall be lawful for any person to apprehend and carry such slave before a justice of the peace, in the county or corporation where apprehended, and if it shall appear to the justice that such slave comes within the purview of this act, he shall order him or her to the jail of the county or corporation, there to be safely kept until the next court, when, if it shall be made to appear to the court, that the slave so ordered to jail hath been permitted or suffered to hire him or herself out, contrary to the meaning of this act, the court shall immediately proceed to enter up judgment, and award execution against such offender, for the amount of said forfeiture with costs: *Provided*, That if the owner or holder of such slave or slaves shall enter into bond before said justice, payable to the governor and his successors in office, with sufficient security, in double the amount of said forfeiture, conditioned to appear at the next county court of the proper county, to do and receive what shall be enjoined him by the court, then such slave may be suffered to remain with his or her owner.

§ 14. All runaway slaves may be lawfully apprehended by any person, and carried before the next justice of the peace, who shall either commit them to the county jail, or send them to the owner, if known, who shall pay for every slave so taken up, the sum of six dollars to the person apprehending him or her, and also all reasonable costs and charges.

§ 15. And whereas, many times slaves run away and lie out, hid, and lurking in swamps, woods, and other obscure places, killing hogs, and committing other injuries to the inhabitants of this state; therefore, *Be it enacted*, That in all such cases, upon intelligence given of two or more slaves lying out as aforesaid, any one justice of the peace, of the county where the slaves are supposed to lurk or to do mischief, is required, by warrant, reciting their names and owners' names if known, to direct the captain of the patrols to take such power with him as he shall think fit and necessary for the effectual apprehending of such out-lying slave or slaves, and go in search of them, and, upon their being apprehended, to commit them or any of them, to the jail of his county for further trial; and for every such

Penalty on sheriffs and other officers for not endeavoring to suppress unlawful meetings.

*Ib. Sec. 10.* Masters not to license their slaves to trade as freemen,

*Ib. Sec. 11.* Masters not to go at large, or hire themselves out.

Mode of proceeding against slave and owner.

*Ib. Sec. 12.* Runaway slaves, how to be dealt with.

*Ib. Sec. 13.* Powers of justices with respect to out-lying slaves.



Reward for apprehending out-lying slave.

out-lying slave by him apprehended and committed to jail as aforesaid, he shall be entitled to a reward of thirty dollars, to be paid out of the state treasury, three-fourths of which sum shall be reimbursed to the treasury by the owner of such slave: *Provided*, That if the owner be an inhabitant of this state, the said sum shall be added to his tax for the current year, and be collected and accounted for in the same manner as other public taxes are; *And provided, also*, That any other person or persons, who shall apprehend and commit to jail as aforesaid, any out-lying slave, shall be entitled to the same reward for every such apprehension and commitment.

*Ib. Sec. 14.*  
Slaves prohibited keeping dogs,

§ 16. All slaves are hereby prohibited from keeping dogs, under any pretence or consideration whatsoever; and the slave or slaves so offending, upon complaint thereof before any justice of the peace, shall be punished with not exceeding twenty-five stripes for every such offence, and the master or owner, who shall permit his slaves to keep dogs contrary to this law, shall forfeit and pay the sum of five dollars for each dog so kept, to the use of the person complaining; and moreover, shall make good all damages done by dogs appertaining to, or kept by any of his or her slaves.

*Ib. Sec. 15.*  
Slaves not to own any horse or mare.

§ 17. No slave shall be allowed to own any horse, mare, gelding, or mule; and if any slave shall actually own such property, the same shall be forfeited and sold under the direction of the court of the county where such property shall be so owned; one moiety of the proceeds for the use of the state, and the other moiety to any person who will sue for the same. It is also forbidden to slaves to keep hogs running at large, or to keep in enclosures more than they can conveniently maintain, the number of which to be regulated by the several owners, and be distinctly marked, and register thereof made, for the inspection of any person who shall require to see the same.

In what manner they may keep hogs.

1805—(5)  
*Sec. 1.*  
Liable for debts contracted before emancipation.

§ 18. All slaves emancipated shall be liable to be taken by execution to satisfy any debt contracted by the person emancipating them, before such emancipation is made.

*Ib. Sec. 2.*  
Slaves may sue for their freedom by petition to the circuit court.  
Preliminary proceedings.

§ 19. Any slave in this state, claiming his or her freedom, shall proceed by petition to the circuit court of the county where his or her master or owner shall reside, who, if the slave be in his or her possession, shall enter into bond with approved security to the governor, in a sum to be adjudged of by the court, that the said slave shall be forthcoming and subject to the order of said court, and that he will abide by the judgment the said court may render in the premises; in which case such slave shall remain in the service of his owner, or person claiming him or her, until the determination of the suit; and if out of the possession of his or her owner, or person claiming him or her, such slave shall enter into recognizance with sufficient security, to be approved of by the court, to make good to his or her owner all such costs and damages as he shall have incurred, in consequence of the application of such slave for the recovery of his freedom, in case he eventually fail in substantiating the same, and that he will be forthcoming and abide the sentence of the said court; which power vested in said court, to take bonds and recognizances, may be exercised by the judge, out of court as well as in court.

[a 1815—(3)  
*Sec. 1.*]

1800—(7)  
*Sec. 1.*  
Runaway slave committed to jail,

§ 20. When any slave shall be committed to the jail of any county as a runaway, and such runaway slave shall not be claimed and proved by the owner thereof within six months from the first pub-



lication<sup>1</sup> of the commitment of such slave, in some newspaper published in this state, it shall be lawful for the sheriff of the proper county to sell said runaway slave at public auction, at the court-house of his proper county, upon giving at least thirty days' previous notice of such sale, by advertisement published in some newspaper in this state, at the court-house of the proper county, and at least two other public places within the same; and out of the proceeds arising from the sale of any runaway slave as aforesaid, the sheriff shall be entitled to the same commission and fees as are allowed in cases of execution; and the balance, after paying all prison fees, and the maintenance of said runaway slave while in jail, shall be for the use of the proper county: *Provided*, That if the owner of such runaway slave shall, after such sale, prove his property in any such slave, the proper county shall pay to him the amount that shall have been paid into the county treasury, on account of the sale of such slave, but the right to any slave, sold as aforesaid, shall be and remain vested in the purchaser under the sale made by the sheriff, as aforesaid.

if not claimed by his owner, in six months after publication of commitment, may be sold by the sheriff

Proceeds, after deducting expenses, to go to the county. Owner, on proof, may recover amount paid, but not divest purchaser's title.

§ 21. It shall not be lawful for any free negro or mulatto, either directly or indirectly, to retail any kind of spirituous liquors within this state.

1832—(17)  
Sec. 1.  
Negroes not to retail spirits.  
Ib. Sec. 2.  
Penalty.

§ 22. Any free negro or mulatto, who shall, directly or indirectly, violate the provisions of this act, shall forfeit and pay the sum of ten dollars for every such offence; recoverable before any court having competent jurisdiction of the same, one half to the informer, and the other half to be paid into the county treasury.

§ 23. Any free negro or mulatto, who shall violate the provisions of this act, after having been once convicted and fined, shall, in addition to the fine imposed by this act, receive for every such offence, such corporal punishment on his or her bare back, not exceeding twenty-five stripes, as may be ordered by the court trying the same: *Provided*, That this act shall not affect any free negro, mulatto, or other person, who, by the treaty between the United States and Spain, became a citizen of the United States, or the descendants of any such person.

Ib. Sec. 3.  
Punishment for a second offence.

§ 24. Any person or persons, who shall attempt to teach any free person of color, or slave, to spell, read, or write, shall, upon conviction thereof by indictment, be fined in a sum not less than two hundred and fifty dollars, nor more than five hundred dollars.

1832—(8)  
Sec. 10.  
Penalty for attempting to teach slave, &c., to read, &c.

§ 25. Any free person of color, who shall write for any slave, a pass or free-paper, on conviction thereof, shall receive for every such offence, thirty-nine lashes on the bare back, and leave the state of Alabama within thirty days thereafter; and should he or she again return to the state of Alabama, or be found within the same after the time above limited for his or her departure, on conviction of violating this provision of the law, he or she shall forfeit his or her liberty, and be sold as a slave for the term of ten years, by order of any two justices of the peace, before whom he or she may be taken and convicted, ten days' previous notice being given of the time and place of sale; one half of the proceeds of said sale, after paying one dollar each to said justices, and two dollars to the constable for attending the trial, and selling said free person of color, together with all other costs that may accrue, shall be paid to the use of the informer, and the other half to the use of the state.

Ib. Sec. 11.  
Penalty on free person of color for writing pass or free-paper for slave.

<sup>1</sup> For mode of publication, See § 42 *post*.



*Ib. Sec. 12.*  
Penalty on  
slave for  
writing pass  
or free-paper  
for slave.

§ 26. Any slave, who shall write for any other slave, any pass or free-paper, upon conviction, shall receive, on his or her bare back, fifty lashes for the first offence, and one hundred for every offence thereafter, by order of any justice of the peace before whom he or she may be convicted; and on every conviction, the owner of said slave shall pay one dollar to the justice of the peace, and two dollars to the constable for attending the trial and whipping the slave, together with all other costs that may lawfully accrue; and any persons may arrest any slave so offending, and take him or her before any justice of the peace for trial.

*Ib. Sec. 14.*  
Penalty on  
free negroes,  
or persons of  
color, for  
trading with  
slaves.

§ 27. If any free negro or person of color shall buy of any slave, or sell to any slave, any article or commodity whatsoever, without a written permission from the master, owner, or overseer of said slave, designating the article so to be bought or sold, said free negro or person of color, upon conviction thereof, before any magistrate of the county where such offence shall be committed, shall receive on his or her bare back, thirty-nine lashes well laid on.

*Ib. Sec. 15.*  
Free persons  
of color for-  
bidden to as-  
sociate with  
slaves.  
The punish-  
ment.

§ 28. If any free negro or person of color shall be found in company with any slaves in any kitchen, out-house, or negro-quarter, without a written permission from the owner, master, or overseer of said slaves, said free negro or person of color shall, for the first offence, receive fifteen lashes, and for every subsequent offence, thirty-nine lashes, on his or her bare back; which may be inflicted by said master, owner, or overseer, or by any officer or member of any patrol company who may find said free negro or person of color, in any kitchen, out-house, or negro-quarter, associating with slaves without such written permission.

*Ib. Sec. 16.*  
Same pun-  
ishment if  
slave be  
found at the  
house of free  
person of  
color.

§ 29. If any slave, without a written permission of the master, owner, or overseer of said slave, shall be found in company with a free negro or person of color, in the dwelling-house or out-house of said free negro or person of color, said free negro or person of color shall receive the same punishment, in the same manner, as is prescribed by the provisions of the fifteenth section of this act.

*Ib. Sec. 17.*  
More than  
five male  
slaves an  
unlawful as-  
sembly.

§ 30. It shall not be lawful for more than five male slaves, either with or without passes, to assemble together at any place off the proper plantation to which they belong; and if any slaves do so assemble together, the same shall be deemed an unlawful assembly.

*Ib. Sec. 18.*  
Unlawful as-  
semblies to  
be dispersed  
by patrols  
and other  
officers.  
The punish-  
ment.

§ 31. It shall be the duty of all patrols and officers, civil and military, forthwith to cause said slaves, so assembled, to disperse; and each of said slaves, so assembled, shall be liable to receive any number of lashes, not exceeding ten; and any slave, who may once be punished for attending such unlawful assembly, and shall again offend herein, shall be liable to be punished at the discretion of any magistrate before whom he may be carried for trial, by stripes not exceeding thirty-nine.

*Ib. Sec. 19.*  
Certain as-  
semblies  
lawful.

§ 32. The provisions of this act shall not apply to any assemblage of slaves, attended by the master, owner, or overseer of such slaves.

*Ib. Sec. 22.*  
Slaves, &c.  
may attend  
public wor-  
ship.

§ 33. Nothing in this act shall be so construed, as to prevent free persons of color and slaves from attending places of public worship held by white persons.

*Ib. Sec. 23.*  
Explanation  
of 17th sec-  
tion.

§ 34. Nothing in the provisions of the seventeenth section of this act shall be so construed, as to debar the master or owner of slaves from sending to his neighbor or neighbors any slave or slaves unaccompanied by master, owner, or overseer, for the purpose of assisting him or them to labor.



§ 35. If any slave or free person of color shall preach to, exhort, or harangue any slave or slaves, or free persons of color, unless in the presence of five respectable slave-holders, any such slave or free person of color, so offending, shall, on conviction before any justice of the peace, receive, by order of said justice of the peace, thirty-nine lashes for the first offence, and fifty lashes for every offence thereafter; and any person may arrest any such slave or free person of color, and take him before a justice of the peace for trial: *Provided*, That the negroes, so haranguing or preaching, shall be licensed thereto, by some regular body of professing Christians immediately in the neighborhood, and to whose society or church such negro shall properly belong.

*Ib. Sec. 24.*  
Persons of color forbidden to preach to, or exhort other persons of color, except in presence of five slave-holders. Punishment. Proviso.

§ 36. Slaves shall be competent witnesses, in all cases where free persons of color are charged with any offence against the laws of the state.

1836—(32)  
*Sec. 7.*  
Slaves competent witnesses against free negroes. 1834—(25)

§ 37. Whenever the owner or owners of any slave or slaves shall be desirous of emancipating such slave or slaves, such owner or owners shall make publication in some newspaper, printed within the county where such slave or slaves reside, (or if there be no paper printed in said county, then in the nearest paper thereto,) for at least sixty days previous to the making application, in which shall be set forth the time and place that such application will be made, together with the names and description of the slave or slaves sought to be emancipated; and, at the time appointed, the judge of the said county court may, upon petition filed, proceed to hear and determine upon the application so made, and if, in his opinion, the said slaves should be emancipated, in consideration of long, faithful and meritorious services performed, or for other good and sufficient cause shown, the said judge may proceed to emancipate and set free such slave or slaves; and the clerk of the said court shall make record of the same in a book to be kept by him for that purpose: *Provided*, That such slave or slaves shall remove without the limits of this state, within twelve months after such emancipation, never more to return; and that such emancipation shall not take effect, until after such removal.

*Sec. 1.*  
Judge of county court may emancipate slaves upon petition of owner.

On what grounds.

Proviso.

§ 38. If the said slave or slaves shall return within the limits of this state, after such removal and emancipation, he, she or they shall be subject to be apprehended by the sheriff of the county within which the same may be found and imprisoned; and, after having advertised the same for at least thirty days, may be sold to the best bidder for cash, as slaves for life: and the proceeds of such sale, after paying all expenses, shall be paid into the county treasury for the use of said county.

*Ib. Sec. 2.*  
If slave, after emancipation & removal, return to this state, he may be sold as a slave for life.

§ 39. It shall be the duty of all sheriffs, constables and patrols, to apprehend slaves who shall return within the limits of the state, after having been so emancipated and removed, and bring them before some justice of the peace, who shall commit them; and the same compensation shall be allowed in such cases, as is allowed for apprehending runaway slaves.

*Ib. Sec. 3.*  
Sheriff, constable, &c. to apprehend emancipated slave so returning.

§ 40. Nothing, in this act contained, shall be so construed, as to prejudice the rights of the creditors of the owner or owners of slaves so emancipated.

*Ib. Sec. 4.*  
Rights of creditors not to be prejudiced. 1839—(35)

§ 41. If any person shall, without just cause, to be judged of by the jury trying the offence, commit an assault or assault and battery on the body of a slave, such person not being legally appointed patrol, or not being the owner, or overseer or other agent of the owner of such slave, he shall be liable to indictment for said

*Sec. 1.*  
Assault and battery on a slave indictable.



offence, and, on conviction thereof, shall suffer the same kind of punishment, as if the offence had been committed on the body of a free white person.

1839—(36)  
Sec. 1.  
When runaway slave is committed, how publication shall be made.

§ 42. Whenever any slave, or person of color, shall be committed to either of the jails of this state as absconding, the particular sheriff or jailer of the county, when such commitment is had, shall, within ten days thereafter, cause a description of such slave or person of color to be published in the newspaper published nearest to said jail; and if, at the expiration of thirty days, the said slave or slaves shall not be claimed, then, and in that case, it shall be the duty of said jailer, to publish, or cause to be published, the same in a newspaper in the city of Mobile, Montgomery, Tuscaloosa, and Huntsville, once a week in each paper for six months, unless the said slave, or person of color, be sooner delivered to the owner.

*Ib. Sec. 2.*  
Expense of publication, how paid.

§ 43. The expense of such publication, shall be paid by the owner of such slave, or be deducted like other expenses out of the proceeds of the sale of any such slave or person of color, in the event of a sale being made as is now required by law.

1841—(38)  
Sec. 1.  
Master of vessel, arriving at Mobile, to make report & entry at custom-house, &c.

§ 44. It shall be the duty of the master of any and every vessel, arriving from any foreign port, or place, or otherwise, to repair forthwith, after first having made his report and entry at the custom-house, in the city of Mobile, to the mayor's office, and deliver, on oath, a complete and correct list of every person who arrived with him in said vessel, distinctly stating, first, the names of his officers and crew, then the names of each passenger, the color and sex of each person, and whether they be free or otherwise.<sup>1</sup>

*Ib. Sec. 2.*  
Officer administering oath, may receive 25 cents.

§ 45. It shall be the duty of the mayor or other officer, authorized to administer oaths, to demand and receive from said master twenty-five cents, and no more.

*Ib. Sec. 3.*  
City clerk to file crew and passenger lists for public inspection. Inspection fee, 12 1-2 cts

§ 46. It shall be the duty of the clerk of the city of Mobile, to file carefully among the archives of said city, all such crew and passenger lists, and they shall be kept in said office, for the inspection of any citizen of the United States, who may have reason for examining the same, and for each and every such examination, the clerk shall be entitled to a fee of twelve and a half cents, and no more.

*Ib. Sec. 4.*  
When any free negro or person of color arrives in Mobile, may or to issue warrant for his arrest.

§ 47. Whenever any free negro, or person of color, shall have arrived in any vessel within the district or port of Mobile, as designated by the acts of congress, it shall be the duty of the mayor of Mobile, forthwith to issue his warrant to the sheriff of the county of Mobile, or marshal of the city, as he may deem most convenient, directing said officer to proceed immediately on board such vessel, and arrest such free negro or negroes, or person or persons of color, and forthwith to commit the same to the common jail of said county, to be dealt with according to the provisions of the act<sup>2</sup>, to which this is supplemental.

*Ib. Sec. 5.*  
For every such arrest, sheriff, mayor, city marshal or harbor-master, entitled to fee

§ 48. For every such arrest, the sheriff, mayor, city-marshal, or harbor-master, shall be entitled to such fees, as are provided in the fourth section of the act to which this is supplemental, for the services rendered by either of them, as the case may be.

<sup>1</sup> See "Penal Code," chap. 15, § 21 to 27.

<sup>2</sup> The law, referred to in § 47, 48 and 50, is in the following words:

"§ 4. And be it further enacted, That the fees, to be allowed and paid for the services required by this act, shall be, to the harbor-master, two dollars, for giving notice of the arrest of each and every free negro or person of color; to the sheriff, three dollars, for apprehending and committing, and fifty cents per day while in confinement, with the same fees for selling that are allowed by law in other cases;



§ 49. The jurisdiction of the sheriff and city marshal, under the warrant of the mayor, shall extend in all cases, for the apprehension of free negroes and persons of color, to any vessel within the Bay of Mobile.

*Ib. Sec. 6.*  
Jurisdiction extended throughout bay of Mobile.

§ 50. The fees, allowed to the harbor-master in the fourth section of the act to which this is supplemental, shall be given to any individual, who may lodge information of the arrival, either by sea or land, of any free negro or person of color, in the city of Mobile; and any white person, who may have brought such free negro or person of color with them by land, shall be liable to the penalties imposed on the masters of vessels, by the act to which this is supplemental.

*Ib. Sec. 7.*  
Compensation of any individual lodging information.

SLAVE TRADE.

§ 1. ANY slave or slaves, brought or imported into this state, contrary to the laws of the United States, in such case made and provided, shall be condemned by any superior court of this state, within whose jurisdiction the said slave or slaves shall be brought or be seized, upon libel filed in the said court; and shall be sold by the proper officer of the court to the highest bidder, at public auction, for ready money, after advertising the time and place of such sale, in some newspaper in this state, at least fifteen days previous thereto.

1815—(2)  
Slaves, imported contrary to the laws of the U. S. to be condemned and sold.

§ 2. The residue of the money arising from the sale, after deducting the costs of suit, shall be paid, one half to the collector of the customs within whose district the said slave or slaves shall have been seized, and the other half into the state treasury. But, in case there shall have been an informer, one half of the amount, directed to be paid to the collector of the district, shall accrue and belong to said informer.<sup>a</sup>

Proceeds to go to the treasury, collector of the customs, and informer.

<sup>a</sup> But see § 8 & 9.

§ 3. The governor of this state is authorized and required to appoint some suitable person, as the agent of the state, to receive all and every slave or slaves, or persons of color, who may have been brought into this state in violation of the laws of the United States, prohibiting the slave trade: *Provided*, That the authority of the said agent is not to extend to slaves who have been condemned and sold.

1823—(3)  
*Sec. 1.*  
Governor to appoint an agent to receive slaves.

§ 4. The governor is required to take such bond or bonds from the said agent or other person, into whose possession the said slaves may be placed, in such amount, and with such conditions, as he may deem necessary to ensure their safe-keeping and proper treatment.

*Ib. Sec. 2.*  
Agent required to give bond.

§ 5. The said slaves, when placed in the possession of the state as aforesaid, shall be employed on such public work or works, as shall be deemed by the governor, of most value and utility to the public interest.

*Ib. Sec. 3.*  
Slaves to be employed on public works

§ 6. Such part of the said slaves shall be hired out as will be sufficient to defray the expenditures necessary to the maintenance and support of those employed on the public works as aforesaid.

*Ib. Sec. 4.*  
Their maintenance.

and to the justice of the peace, for the duties required of him by this act, two dollars, and to the solicitor, for each and every recovery under this act, the sum of twenty dollars."



*Ib. Sec. 5.*  
How dis-  
posed of  
after decree.

§ 7. In all cases, in which a decree of any court, having competent authority, shall be in favor of any claimant or claimants, the said slaves shall be, truly and faithfully, by said agent, delivered to such claimant or claimants; but in case of their condemnation, they shall be sold by such agent, for cash, to the highest bidder, by giving sixty days' notice in a newspaper, printed at Cahawba, Mobile, Tuscaloosa, Huntsville, and Florence.

*Ib. Sec. 6.*  
Proceeds  
paid into the  
treasury.

§ 8. The money, arising from such sale or sales, shall be paid into the treasury of the state, except one-fourth thereof, which shall be paid to the informer, if there be one.

*Ib. Sec. 7.*  
Judge em-  
powered to  
decide on  
conflicting  
claims of in-  
formers.

§ 9. No informer shall be entitled to receive any part of the money arising from any such sales, except by virtue of the decree of the judge of the circuit court of the county into which such slave or slaves may have been first brought; and the circuit judges of this state are expressly authorized to try and decide all conflicting claims set up by informers, in relation to said slaves.

*Ib. Sec. 8.*  
Agent to de-  
mand slaves.

§ 10. It shall be the duty of the said agent, to ask for and demand said slave or slaves of any person or persons in whose possession they may be found.

## STOCK—OF THE STATE OF ALABAMA.

1833—(6)  
State stock  
assignable by  
endorsement

§ 1. THE certificates of stock, created in obtaining loans for the use of the state, in pursuance of any of the laws heretofore passed for that purpose, and of all stock which may hereafter be created by the state, shall be assignable by endorsement made by the legal holder thereof, or by transfer in a book or books of the Bank of the State of Alabama, made by the legal holder, or his attorney authorized by power duly authenticated; and it shall be the duty of the president and directors of said bank, to cause books to be kept for the purpose aforesaid; wherein also shall be kept an account of the said stock, and of all payments of principal and interest thereon, and of renewed certificates of stock, that may be issued in virtue of this act.

Manner of  
renewing  
lost certifi-  
cate.

§ 2. In case any of the said certificates shall be lost or destroyed, the same may be renewed in the manner following, to wit: proof of such loss or destruction, and an affidavit, declaring the property therein to be *bona fide* in the applicant for renewal, shall be made before a judge of the circuit court of this state, or of any state of the United States, or before a judge of the supreme or any district court of the United States, which proof shall be certified by such judge, together with his opinion that the same is satisfactory; and the legal proprietor of the lost or destroyed certificate shall execute a release of his interest therein, in consideration of a new certificate of stock, to be issued for the same amount and with like effect; which release shall be filed and recorded in a book kept for that purpose by the treasurer of the state; and it shall also appear, that notice of the intended application shall have been given in a public newspaper in the state where the loan may be effected, for three months immediately before application for a renewed certificate shall be made; whereupon, it shall be the duty of the governor of this state for the time being, the comptroller, treasurer, and president of the bank aforesaid, to issue new certificates of stock, in lieu of those which may be lost



or destroyed; which renewed certificates shall express on their face, a description of the original, and that the same have issued in lieu of such original; and renewed certificates of stock, so issued, shall be equally valid, and shall be assignable in like manner as the original certificates, in lieu of which they shall have issued.

§ 3. No renewed certificate of stock shall be granted, in favor of an assignee of a lost or destroyed certificate, unless he appear to be such assignee by transfer in the books kept at the Bank of the State of Alabama, conformably to the requisitions of the first section of this act; or, in case the assignment be by endorsement, unless such endorsement shall have been duly attested by the cashier of some specie-paying bank of the state where the loan may be effected; whereby, in every case, it shall be manifest, that the person applying is the proper assignee; nor shall any payment of principal or interest be made to any assignee of a certificate of stock, unless such person appear to be the assignee, in the manner provided by this act.

§ 4. All laws heretofore passed, in relation to the transfer, and renewal of certificates of stock, are hereby repealed: *Provided*, That twelve months be allowed for the promulgation of this law in the other states, and that any proceedings, which may be had in any other state, within twelve months next after the passage hereof, under the laws or any of them in force up to the time of the passage of this act, shall be as valid as if this act had not passed.

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STRAYS.

§ 1. EVERY person, who shall take up a stray, which shall be found on his plantation or land, shall forthwith give information thereof to some justice of the peace for the county, and make oath before said justice, that the same was taken up at his or her plantation or place of residence, or his or her land adjoining the same, and that the marks or brands have not been defaced or altered since the taking up; and thereupon the said justice shall issue his summons to two disinterested householders of the neighborhood, commanding them, after being duly sworn, to value and appraise the same without partiality, favor, or affection, and certify the valuation under their hands, together with a particular description of the kind, marks, brands, stature, color, and age; which certificate shall be attested by the justice, and transmitted by him to the clerk of the county court within ten days thereafter, to be by such clerk entered in a book to be kept for that purpose, for which the justice and clerk shall each receive fifty cents, to be paid by the taker-up: *Provided*, That if two or more strays of the same species are taken up by the same person at the same time, they shall be included in the same entry, and one advertisement, and the justice and the clerk shall receive no more fees than for one of such strays.

§ 2. When any stray as aforesaid shall be found dead, or shall have escaped, the taker-up shall, without delay, make report thereof to the clerk, on oath, who shall make a memorandum of the same in the margin of his book where the certificate of such stray was registered, and the taker-up shall not be answerable for the same, nor shall the taker-up be liable for using said stray: *Provided*, The same shall not have been abused.

Renewal for assignee, how regulated.

Repeal. Proviso.

1820—(30) Strays taken up, to be reported to some justice of the peace.

Justice shall summon appraisers,

and certify their appraisement to the clerk of the county court.

Several strays may be included in the same entry.

Death or escape of strays to be reported.



Expenses of keeping a stray, how ascertained.

§ 3. When any stray shall be proved away, and the owner and the taker-up cannot agree as to expenses, application may be made by either party to the next justice of the peace, who shall require two householders of the neighborhood, who shall have the privilege of appointing an umpire, and adjust the dispute, and their award shall be final.

Penalty for removing or selling stray under 12 months.

§ 4. If any person shall take or send away any stray out of this state, on any pretence whatsoever, or shall trade or sell the same under twelve months, he or she, so offending, shall forfeit and pay one hundred dollars, to be recovered in any court of this state having jurisdiction thereof, one half to the use of the informer, and the other half to the use of the county wherein the offence shall have been committed; and, moreover, shall pay the owner the amount of the appraisement, or if no owner appear, then to the county, subject to the regulations hereinafter ordered, under the sixth section of this act.

Penalty for taking up stray or using it contrary to this act.

§ 5. If any person shall take up or use a stray of whatever description, contrary to the meaning of this act, such person shall, for every such offence, forfeit and pay one hundred dollars, recoverable with costs, in any court of this state having jurisdiction thereof, one half to the county, and the other half to the person suing for the same,

The property of strays vested in taker-up.

§ 6. The property of every stray or strays taken up as aforesaid, twelve months after such appraisement, and not proved away by the owner thereof, shall be deemed vested in the taker-up of the same:

Owner may demand the full price.

*Provided, nevertheless,* That should the owner apply in five years,

Taker-up to pay half the appraisement.

he shall receive the full amount of such appraised stray, one half from the taker-up, and the other half from the county, after paying all reasonable expenses; *And provided, also,* That the person, so

Penalty for neglecting.

taking up, shall account for and pay into the hands of the clerk of the county, one half of the appraised value of all such strays, according to the true intent and meaning of this act; and if the taker-up shall neglect to account with the said clerk for the same, he or she,

To be recovered by clerk

so failing, shall forfeit and pay the appraised value of all such strays, to be recovered by action of debt, before any jurisdiction having

cognizance thereof; and it shall be the duty of the clerk to commence suits, respectively, against all delinquents for the recovery of the same, and shall be entitled to receive five per centum on all money recovered and received, and the balance the said clerk is required to pay over to the county treasurer.

Owner to receive half the appraisement.

§ 7. It shall be lawful for the former owners of any strays, at any time, on proving his property by one or more competent witnesses, to demand and receive from the county treasurer, one half of the value of any such strays appraised and accounted for as aforesaid, deducting therefrom the treasurer's commissions of two per centum for receiving and accounting for the same.

Stray horse, &c. to be exhibited at circuit court

§ 8. It shall be the duty of the taker-up of any stray horse, mare, or mule, to cause the same to be exhibited on the first day of each term of the circuit court of the county, next succeeding the time at which such stray shall be taken up, from twelve to four o'clock on each day, that the owner may have an opportunity of claiming his property.

Clerk to register and file certificates of strays.

§ 9. The clerk of each county of this state shall keep a book, in which he shall register all certificates of strays delivered to him, and file the same in regular order. It shall be his duty to cause a copy of the certificate of appraisement, of every horse, mare, colt, or mule, to be published in the nearest newspaper three times. It,



moreover, shall be the duty of the clerks to make out a fair and correct list of all strays, and affix the same at the door of the court-house of their respective counties on the first day of each term of the circuit court, omitting such strays as are proved away, escaped, or dead, under the penalty of five dollars for such neglect or omission: the clerk shall receive as fees of office, for advertising any horse, mare, colt, or mule, twenty-five cents; and for every head of cattle, sheep, or hogs, six and one-fourth cents; and for every search of the stray books, twelve and one-half cents, to be paid by the person applying to search.

§ 10. No cattle or sheep shall be taken up or posted in the months of April, May, June, July, August, September, or October, unless it be a cow with a young calf.

§ 11. At any time within twelve months, it may be lawful for the owner of any stray or strays, taken up under the provisions of this act, to prove his or her property, by his or her own oath, or by the oath or affirmation of any other competent witness, in the following manner, to wit:—a certificate, giving a particular description of the stray or strays so claimed, shall be made out, giving the kind, marks, brands, stature, color, or age of such stray or strays, as may be; which certificate shall be sworn to and subscribed before any justice of the peace, and delivered to the taker-up, to be filed in the clerk's office; and the delivery of such certificate as before mentioned, and payment of all costs incurred from posting and keeping such stray or strays, shall revert the same in the proper owner.

§ 12. In all cases of the division of counties, the stray or strays shall belong to the county wherein the same may be found, and shall be disposed of as other strays posted in said county.

§ 13. Hereafter, when any person or persons shall be desirous of posting any stray that may be found on his, her or their premises, he, she, or they, shall apply to some justice of the peace, of the county where such stray may be found, for the purpose of having such stray appraised; and, on ascertaining the appraised value thereof in the manner now pointed out by law, the said justice shall require from the person or persons posting such stray or strays, to enter into bond, with sufficient security to be approved of by said justice, to the clerk of the county court and his successors in office, in the sum of the full amount of the appraised value of such stray or strays, conditioned, that he, she, or they, will well and truly pay to the said clerk or his successors in office, half the amount of the appraised value of such stray or strays: *Provided*, The same is not proved away by the owner or owners thereof, within twelve months from the day of such appraisement; *And provided, also*, That the stray or strays do not die or escape without the connivance or neglect of the taker-up.

§ 14. If any person or persons shall presume to use any stray or strays without first having given bond as aforesaid, he, she, or they, shall be liable to all the penalties prescribed in the fifth section of an act, passed the twenty-first December, eighteen hundred and twenty, to which this is an amendment, entitled "An Act to reduce into one the several acts concerning strays."

§ 15. It shall be the duty of the justice before whom such stray or strays may be appraised, to take such bond as is mentioned in the first section of this act; which bond he shall return, together with the post-note, in the manner now pointed out by law for making return of the post-note of strays.

§ 16. In addition to the fees now required to be paid by takers-up of strays, at the time of posting the same, when such stray or strays,

Strays to be published, and posted up.

Clerk's fees.

In what months cattle are not to be posted.

Owners may prove property within twelve months.

Mode of proof.

In case of division of counties.

1823—(14)  
Sec. 1.  
Taker-up of strays to enter into bond, payable to clerk of county court.

Amount and condition of bond.

Proviso.

Ib. Sec. 2.  
Penalty for using stray without giving bond.

a See the preceding act.

Ib. Sec. 3.  
Justice to take the bond, and return it.

1826—(4)  
Sec. 1.  
Additional



fee when  
stray is re-  
quired to be  
published.  
<sup>a</sup> *The first*  
*act.*

so posted, shall be of a description requiring publication in a newspaper, according to the ninth section of the act to which this is an amendment,<sup>a</sup> the taker-up in such case shall pay the sum of two dollars, for the printing of said publication, to the justice, which shall be, by said justice, returned to the clerk of the county court with the certificate of appraisement, as is now provided by law.

*Id.* Sec. 2.  
Additional  
expense to be  
refunded by  
the owner.  
*Id.* Sec. 3.  
Penalty on  
justice for  
failing to re-  
turn ap-  
praisement  
and printing  
fees.

§ 17. The said sum shall be, by the said taker-up, recovered back of the owner of such strays, when proved away, as other expenses now are.

§ 18. Any justice, failing to return the appraisement of said strays and printing fees, so deposited with him, shall forfeit one hundred dollars for every such offence, recoverable by any person who will sue for the same, one half to the use of the said person, and the other half to the use of the county, before any court having jurisdiction of the same.

## SURPLUS REVENUE.

1836—(33)  
Treasurer of  
the state au-  
thorized to  
receive this  
state's por-  
tion of the  
surplus  
revenue.  
Governor to  
cause to be  
issued a cer-  
tificate of  
deposit for  
each sum re-  
ceived.

§ 1. THE treasurer of this state is authorized and required to receive from the treasury of the United States, the portion of the public money of the United States allotted to this state by the act of congress passed at its last session, entitled "An Act to regulate the deposits of the public money."

§ 2. The governor of this state shall cause to be issued, under the seal of the state, signed by himself, and countersigned by the secretary of state, a certificate of deposit for each sum of money received by the treasurer of this state as aforesaid; which certificate shall be in such form as may be prescribed by said secretary, express the usual obligations in such cases, and pledge the faith of the state for the safe-keeping and re-payment thereof, according to the provisions of the thirteenth section of said above recited act.

1837—(23)  
Sec. 1.  
Treasurer to  
deposit the  
money so re-  
ceived in the  
state bank  
and branch-  
es, in equal  
portions.

§ 3. It shall be the duty of the treasurer of the state, to deposit in the bank of the state and its several branches, all that portion of the public revenue of the United States, which he has received or which he may hereafter receive, as the portion of Alabama, in the following proportion: one-fifth in the bank of the state at Tuscaloosa, one-fifth in the branch bank at Montgomery, one-fifth in the branch bank at Mobile, one-fifth in the branch bank at Decatur, and one-fifth in the branch bank at Huntsville, taking therefor certificates of deposit, and all laws or parts of laws, contravening the provisions of this act, are hereby repealed: *Provided*, That the amount of the surplus revenue, already received and which may hereafter be received, shall be deposited in said bank and its branches, in the above and foregoing proportions, on or before the first day of May next.

## SURVEYORS.

1811—(6)  
To be one  
surveyor re-  
sident in  
each county.

§ 1. THERE shall be a surveyor for each county in this state, who shall reside in the county of his appointment, and shall, before he enters on the duties of his office, give bond, with good and sufficient



security, to be approved of by the county court, in the sum of two thousand dollars, payable to the governor for the time being, and conditioned for the due performance of the duties of his office.<sup>1</sup>

*His bond.*

§ 2. It shall be the duty of the said surveyor, faithfully to execute all orders of survey directed to him, by any of the courts of this state, and to make all surveys of lands, lying in the county, of which he is surveyor, and to which the United States have no claims, at the request of the owners or proprietors thereof, and generally to do whatsoever, in the re-surveying, measuring, and dividing of lands, may be required of him, by any person wishing the same done; and in all his mensurations, he shall use and be governed by the English perch or pole.

*Surveyor's duties.*

*To measure by the English perch or pole.*

§ 3. The fees chargeable by the county surveyors shall be paid by the party desiring the services to be performed, and when the services are rendered in obedience to an order of court, in a suit therein depending, the surveyor shall make out and state an account of his fees for such services, written in words at full length, on the back of one of the plots by him returned to the court, and the same shall be allowed in the bill of costs, to be taxed against the losing party, as other costs; but where it shall happen, that the survey, or any part thereof, was made at the instance of the party in the suit, such and so much of the fees shall not be taxed, as accrue on the work done by the surveyor for him.

*Ib. Sec. 4. Fees, by whom paid.*

§ 4. It shall be the duty of the county surveyor, whenever called on for that purpose, to re-survey, and re-mark, and bound any tract of land in his county, where the old marks are defaced, or are likely to decay and perish, taking special care in all such cases, to be governed by the original surveys, patents, or title deeds, of such tracts; and the said surveyor shall make a plain report and certificate of all such re-marks and boundaries as he may make as aforesaid, and deliver the same to the proprietor or owner of the lands so re-bounded, whose duty it shall be, to have the same recorded in the clerk's office of the county wherein the land is situated, within three months thereafter, and the clerk's fee for recording the same shall be one dollar.

*Ib. Sec. 5. Re-surveying and re-marking lands.*

§ 5. Chain-carriers and markers shall be allowed each one dollar per day for their services as such, to be paid in the same manner as is provided by this act for surveyors.

*Ib. Sec. 6. Chain-carriers' and markers' fees.*

§ 6. Each surveyor appointed under this act, shall administer an oath to each of his chain-carriers, faithfully and diligently to perform their duties as chain-carriers, without favor, affection, or partiality.

*Ib. Sec. 7. Chain-carriers to be sworn by surveyor.*

§ 7. It shall be the duty of each of the surveyors, to be appointed under this act, to write the name of each of his chain-carriers down on his plot.

*Ib. Sec. 8. and names to be entered on the plot.*

<sup>1</sup> County surveyors, formerly appointed and commissioned by the governor, are now appointed by the judge of the county court and commissioners of revenue and roads; they receive, instead of a commission, a certificate of their appointment and qualification from the judge of the county court, and hold their offices for three years.—See "County Officers," and "Commissioners of Revenue and Roads."



## TAVERN-KEEPERS, AND RETAILERS OF LIQUOR.

1807—(31)  
Mode of  
granting  
tavern  
licenses.

§ 1. EVERY person, who shall be recommended for the purpose to the county court of the county, in which such person may be desirous of keeping a tavern, by six or more reputable freeholders of the county, shall be entitled to receive, from the county court aforesaid, a license to keep a tavern for and during the term of one year from the date of such license, and from thence until the next county court, after the expiration of the said one year: *Provided*, That, on receiving the same, the said applicant shall pay to the clerk of the said court, in open court, *twenty dollars for the use of the county*,<sup>1</sup> and it shall be the duty of the said clerk to make an entry thereof on his minutes.

Applicant to  
enter into  
bond.

The applicant, before the license is delivered to him, shall enter into and acknowledge his bond, with sufficient sureties, in the penal sum of three hundred dollars, payable to the governor and his successors in office, conditioned for constantly keeping and providing his tavern, with good, clean, and wholesome diet and lodging for travelers, and stabling, provender, or pasturage for horses, during the term of his license, and for the due observance of all laws and ordinances, which may be in force in relation to tavern-keepers. And when such bond shall be so executed and acknowledged, the clerk shall file the same in his office, and deliver the license to the aforesaid applicant: for which and the bond, and all his services respecting the same, except the table of rates, the clerk shall receive two dollars.

Remedy, on  
breach of  
bond.

In case of the breach of, or not complying with the condition of, the said bond, it shall be lawful for any person, in the name of the governor, to sue for and recover, in any court having jurisdiction thereof, the penalty of the said bond, and apply one half to his or her own use, and the other half to the use of the county, where the cause of action may arise.

County court  
to fix tavern  
rates.

§ 2. The judges of the county courts shall fix the rates and prices to be paid at all taverns in their respective counties, once a year at least, for liquors, lodging, diet, stabling, provender, and pasturage; and may increase or diminish the same, as to them may seem proper.

Tavern-  
keepers to  
post up rates  
in a conspic-  
uous place.

And every tavern-keeper shall, within twenty days after the rates are fixed, set up in his public entertaining room, in a conspicuous place, a fair table of rates, certified by the clerk of the court, (for which the said clerk shall receive twenty-five cents,) there to be constantly kept exposed to public view as aforesaid, under the penalty of twenty dollars.

Penalty for  
charging  
more than  
lawful rates.

§ 3. If any tavern-keeper shall receive any greater price for any drink, diet, lodging, provender, stabling, or pasturage, than by such rate shall be allowed, he or she, so offending, shall forfeit and pay ten dollars for every such offence.

Retailing  
without  
license.

§ 4. Any person who shall presume to keep a tippling-house, or sell rum, brandy, whisky, taffia, or other spirituous liquors, in less quantity than one gallon; or shall sell any strong beer, porter, cider, or wine, in less quantity than four gallons, without a license first

<sup>1</sup> By the Revenue Law of 1827, the amount chargeable for a license to each species of retailers, tavern-keepers, &c. is particularly specified; with the further provision, that "no county tax shall be paid on licenses, except such as may be levied by the county."



obtained as aforesaid, "shall be subject to a fine not exceeding one hundred dollars: <sup>[a 1812—(2)</sup> *Provided*, That all owners of distilleries, within <sup>Sec. 1 & 3.]</sup> the state, shall be authorized to sell spirits of their own distillation in any quantity not less than a quart; and that merchants and shop-keepers may retail liquors by the quart, without a license from the county court of their county, so that the same be not drunk with their consent, and privity in their stores, or on the premises where they reside or have their stores. <sup>[b 1814—(3)</sup> <sup>Sec. 1.]</sup> <sup>Distillers.</sup> <sup>[c 1816—(2)</sup> <sup>Sec. 1.]</sup> <sup>Shop-keepers.</sup>

§ 5. If any inn-holder or tavern-keeper, or other person whosoever, shall give, sell, or deliver any kind of spirituous, fermented, or strong liquors whatsoever, to any apprentice, servant, or slave, or in any way entertain them, without the consent or permission, of the master, owner, or such other person as shall have such apprentice, servant, or slave in his care; every person, so offending, shall, for the first offence, forfeit and pay the sum of ten dollars; and for every succeeding offence the sum of twenty dollars. <sup>Selling liquor to, or entertaining apprentice, servant, &c.</sup>

§ 6. No tavern-keeper, inn-holder, or retailer of spirits, shall presume to sell any rum, brandy, wine, or other kind of intoxicating liquors, to any soldier or soldiers stationed within this state, belonging to and in the actual service of the United States, knowing him or them to be such, without permission from one of his or their commissioned officers. And such tavern-keeper or other person as aforesaid, so offending, shall, for every such offence, forfeit and pay the sum of twenty dollars: *Provided*, That nothing, contained in this act, shall be so construed as to extend to those who are permitted to sell within the military lines. <sup>Selling liquor to troops of U. S.</sup>

§ 7. If any tavern or inn-keeper, or other person within this state, shall presume to sell rum, brandy, or such like spirits, that is adulterated with water, or any other liquor, knowing the same to be adulterated or mixed, and be convicted thereof by the testimony of one or more credible witnesses, he or she, so offending, shall, for every such offence, forfeit and pay twenty dollars. <sup>Selling adulterated liquor</sup>

§ 8. If any inn-holder or tavern-keeper shall be convicted of being drunk in his own inn or tavern, besides the penalty consequent on the crime of drunkenness, his license shall immediately thereupon become void. <sup>Drunkenness.</sup>

§ 9. All the fines and forfeitures, hereinbefore inflicted by this act, shall be recovered before any justice of the peace for the county wherein the offence may have been committed, one-half to the use of the county, and the other half to the use of the person suing for the same. <sup>Mode of recovery.</sup>

§ 10. It shall be the duty of the clerks of the several county courts, on the first day of each term of the circuit court of their respective counties, to furnish the court with a list of the persons who have obtained tavern licenses within one year immediately preceding such court; and every clerk, neglecting so to do, may be fined by said court in any sum not exceeding fifty dollars; which list shall be delivered by the court to the grand jury for their information; and this act, together with the act to which this is an amendment, given in charge, by the court to the grand jury aforesaid; and the grand jury shall present every person or persons, who may violate this act, <sup>1812—(2)</sup> <sup>Sec. 1.</sup> <sup>Clerk of county court to furnish circuit court with a list of those licensed during the last year.</sup>

<sup>1</sup> See "Public Health."

<sup>2</sup> From this mode of recovery are excepted the fines authorized in the fifth section, which are imposed by a later act, the original penalties being repealed. See § 10.



or the acts to which this is an amendment; and it shall be the duty of the judge of the circuit court, upon such presentment being made by the grand jury, to cause the person or persons so presented, to appear before the court, to be tried by a petit jury, without any indictment being filed, and if found guilty, the court shall assess a fine, not exceeding one hundred dollars, on every person or persons so found guilty.

Amount of fine.

*Ib.* Sec. 2.  
Fines to the county treasury.  
1814—(11)

Sec. 2.  
Sheriffs to give information to attorney-general or solicitor, of offenders.

Attorney-general or solicitor required to move against clerks not returning a list of retailers.

a Sec § 10.  
1815—(15)

Sec. 24.  
Assessors & collectors to inquire who sell liquor without license, and lodge information.

Clerk required to furnish collector with a list of persons licensed.

1816—(2)  
Sec. 2.

Free negroes not to be licensed.

1834—(26)

Sec. 1.  
Cider or beer may be sold in any quantity.

Proviso.  
1835—(20)

Sec. 1.  
Repeal of law making tax for license payable into state treasury.

*Ib.* Sec. 2.  
To be paid into county treasury.  
1837—(24)

Sec. 1.  
Prerequisites to obtaining license to retail.

§ 11. The fines, imposed by virtue of this act, shall be paid into the county treasury, to be appropriated to county purposes.

§ 12. It shall be the duty of the sheriff of each county if it should come to his knowledge by information or otherwise, that any person is retailing spirits, to give information thereof to the attorney-general or solicitor at the commencement of each term of the circuit court of his county, and to furnish a list of the witnesses to prove the same, and the attorney-general or solicitor shall cause the said witnesses, provided such person has not obtained a tavern license, to be sworn and sent to the grand jury; he shall, also, at each term of the circuit court, move that a fine be assessed against every clerk, who shall neglect to furnish the court with a list of the persons having obtained tavern licenses agreeably to the provisions of the act passed the eighteenth day of November, one thousand eight hundred and twelve.<sup>a</sup>

§ 13. It shall be the duty of the assessors and tax-collectors of the several counties within this state, to inquire and ascertain, as well as they can, the name or names of every person or persons within their respective counties, who shall retail any vinous or spirituous liquors without being licensed according to law, and give information thereof, with a list of the witnesses who can prove the same, to the attorney-general or solicitor, at the commencement of each term of the circuit court of their proper county, or to the nearest and most convenient justice of the peace, of the county or corporation where such unlicensed person or persons have committed the offence; and it shall be the duty of each clerk of every county within this state, on application for the same, to furnish each assessor and collector of his proper county, a complete list of licensed retailers of vinous and spirituous liquors within such county, showing the commencement and end of such license.

§ 14. It shall not be lawful for free negroes to be licensed to keep tavern, or retail spirituous or vinous liquors.

§ 15. It shall be lawful for any free white person of this state, to sell unadulterated cider or beer in any quantity they may think proper, free of any taxation: *Provided*, That none shall be sold in one mile of any camp-meeting or association, without special leave from the managers of said meeting.

§ 16. So much of a former act as requires the moneys accruing on tavern and retailing license to be paid into the state treasury for the use of the state, is hereby repealed.

§ 17. The county clerks are required to pay the county treasurer the money accruing on said licenses for the use of the respective counties in this state.

§ 18. Every person, who may become desirous to obtain a license to retail spirituous liquors in this state, shall first produce to the county court of the county in which he proposes to obtain said license, the recommendation of six reputable freeholders or householders of said county, who reside within five miles of said petitioner, and enter into bond and security, to be approved by the court,



and pay the sum of thirty dollars\* in open court, for the use of the [a 1839—(37) county.

§ 19. All laws and parts of laws, authorizing or requiring the clerk of the county court to grant a license, or any other authority, to any person or persons to retail spirituous liquors, during the recess of the court, are hereby repealed.

*Sec. 1.]*  
*Ib. Sec. 2.* Clerk not to grant permits in recess.  
*Ib. Sec. 3.* Person, obtaining license, to take oath.

§ 20. Every person, applying for a license as aforesaid, shall, in open court, take and subscribe the following oath, viz: "I do solemnly swear, (or affirm,) that I will not sell any spirituous liquors to any slave or slaves, or purchase any article or commodity from him, her or them, without the permission of the owner or overseer of such slave or slaves, or knowingly suffer the same to be done by my partner, agent, clerk or servant, or any other person upon my premises, if in my power to prevent the same; nor will I knowingly permit any gaming of any kind or description to be carried on or played, on or about my premises: So help me God."

§ 21. No retailer of spirituous liquors shall obtain a judgment before any justice of the peace, or judge of the circuit or county court, upon any account for spirituous or other liquors retailed, until he shall have exhibited before such judge or justice, a license showing his authority to retail, at the time of the date of the items set forth in his account; nor shall he recover judgment, if the defendant can prove, that he, the said plaintiff, has, within one year previous to the commencement of suit, traded with any slave without the permission of his owner or agent.

*Ib. Sec. 4.* Retailer to exhibit license before he recovers judgment on account for liquors retailed.

§ 22. It shall be lawful for any citizen in this state, to sell ardent spirits to any other citizen of industrious or temperate habits, in quantities not less than one quart: *Provided*, The same shall not be drank or consumed upon the premises of the individual selling the same without license.

*Ib. Sec. 5.* Ardent spirits may be sold in quantities not less than a quart.

§ 23. So much of the second section, making it necessary for an individual to obtain his license from the judge of the county court, shall not apply to the county of Mobile.

*Ib. Sec. 6.* Exception in favor of Mobile.

§ 24. The recommendation, required to be produced upon an application for such license, shall be in the following form, viz: "To the Hon. Judge of the county court of \_\_\_\_\_ county: We, the undersigned, certify that we reside within five miles of \_\_\_\_\_, who is an applicant for a license to retail spirituous liquors, and whom we believe to be an individual of unblemished moral reputation."

1839—(37)  
*Sec. 2.* Form of recommendation for license to retail.

§ 25. Any person, who shall evade the provisions of this act, or the act to which this is an amendment, by selling any article of little or no value, and by giving to the purchasers thereof, drinks, or other quantities or portions of spirituous or intoxicating liquors, or who shall, by any other means or in any other manner, evade, or violate, the provisions of the above recited act, shall be subject to indictment, and being thereof convicted, shall be fined at the discretion of the jury trying the same, in any sum not less than twenty, nor more than five hundred dollars, and may be imprisoned at the discretion of the court, for a term not exceeding thirty days.

*Ib. Sec. 3.* Penalty for evasion or violation of the law.

§ 26. Any retailer, who may be convicted of selling any spirituous liquors, or giving the same to any slave or slaves, without the permission of the owner or overseer of such slaves, or who shall knowingly suffer any species of gaming to be carried on, or played on, or about, his or her premises, or who shall furnish any gamblers with spirituous liquors or other accommodations at any out-house or other place, resorted to for the purpose of gaming, shall be subject to all

*Ib. Sec. 4.* Selling or giving liquor to slave without leave of owner or overseer—or suffering gaming on premises—penalty.



the pains and penalties of willful and corrupt perjury, and shall, moreover, forfeit his or her license.

*Id. Sec. 5.*  
No license  
granted but  
at regular  
term of  
court—nor  
for more  
than 12 mos.  
1840—(40)  
*Sec. 1.*  
Justices of  
peace to is-  
sue warrant  
vs. offenders  
on their own  
knowledge  
or informa-  
tion.

§ 27. No license shall be granted, at any other time than at the regular terms of the county court, to retail spirituous liquors, and no such license shall be granted for a longer or shorter time than twelve months from the date thereof.

§ 28. It shall be the duty of the several justices of the peace in this state, whenever they know, of their own knowledge, or whenever information comes to them on oath, that any individual or person is retailing any kind of spirituous liquors without a license, to issue a warrant, forthwith, against such offender or offenders, and bind him or them to the next term of the circuit court to be holden for said county, there to answer according to law.

## TAXES.

### SUBJECTS AND RATE OF TAXATION.

Act of con-  
gress—1819.  
*Sec. 6.*  
Land sold by  
U. S. after  
1st Sep. 1819,  
exempt from  
tax for five  
years.  
Lands of  
non-resi-  
dents, and of  
U. S.

§ 1. EACH and every tract of land, sold by the United States after the first day of September, in the year one thousand eight hundred and nineteen, shall be and remain exempt from any tax laid by the order, or under the authority of the state (*of Alabama*) whether for state, county, township, parish, or any other purpose whatever, for the term of five years, from and after the respective days of the sales thereof: and the lands, belonging to citizens of the United States, residing without the said state, shall never be taxed higher than the lands belonging to persons residing therein; and no tax shall be imposed on lands, the property of the United States.

Con. Ala.  
Art. 6, *Sec. 8.*  
Lands taxed  
according to  
value.  
1836—(27)  
*Sec. 1.*  
Exemptions  
from poll-  
tax.  
*Id. Sec. 2.*  
What slaves  
exempt  
from tax.

§ 2. All lands, liable to taxation in this state, shall be taxed in proportion to their value.

§ 3. All free persons, who, by any bodily infirmity, may be exempt from working on public roads in this state, shall also be exempt from paying poll tax: and all free persons of color, who shall have attained the age of sixty years, shall not be liable to pay poll tax.

§ 4. All slaves, who may be lunatic, blind, or insane, or from other cause may be entirely unprofitable to their owners, shall not be subject to taxation in this state: *Provided*, Nothing in this act shall be so construed, as to exempt from taxation any slave under ten years of age.

1834—(27)  
*Sec. 1.*  
Revolution-  
ary soldiers  
exempted.  
*Id. Sec. 2.*  
What evi-  
dence of rev-  
olutionary  
service  
sufficient.  
1843—(56)  
*Sec. 1.*  
Lands sub-  
ject to *ad*  
*valorem* tax.  
Where to be  
returned.  
Tax collect-  
or may sum-  
mon two  
freeholders  
to value  
land.

§ 5. Each and every revolutionary soldier in this state shall be exempt from paying taxes.

§ 6. The oath of the party, made before an acting justice of the peace, shall be sufficient evidence of his revolutionary services: *Provided*, The party affirming procure one or more of his credible neighbors, who will testify to his general good character as an honest and truth-telling man.

§ 7. All lands in this state, subject to taxation, shall pay an *ad valorem* tax, to be estimated by the person giving in the same, on oath: and all lands, subject to taxation, shall be returned, and the taxes thereon paid, in the county where the same may lie; and if the tax-collector shall be of opinion, that the value, placed upon lands thus given in, is too low, then it shall be the duty of said collector to summon two discreet freeholders, who shall, together with himself, value the same on oath.



§ 8. On all lands in this state liable to taxation, (including all Indian reservations under the treaties with the Creek, Choctaw, Chickasaw and Cherokee tribes of Indians, which are now owned by any person or persons,) shall be assessed and collected the sum of twenty cents for every hundred dollars cash value thereof, ascertained as aforesaid.

*Id. Sec. 2.*  
Rate of tax  
on land.

§ 9. On all lands, lots or buildings within any city or town within this state, there shall be assessed and collected the sum of twenty cents for every hundred dollars cash value, to be estimated as provided for in the first section of this act: *Provided*, That, whenever the owner or agent of lands, lots or buildings, shall neglect or refuse to assess the value thereof, it shall be the duty of the tax-collector to summon two freeholders of the vicinage, to determine the value thereof, on oath; which valuation shall be final and conclusive.

*Id. Sec. 3.*  
Rate of tax  
on real prop-  
erty lying in  
a city or  
town.  
Two free-  
holders may  
be summon-  
ed to value  
such prop-  
erty.

§ 10. Upon the property hereinafter named, there shall be assessed and collected, the tax hereinafter specified, as follows: that is to say, for every slave not exceeding ten years old, ten cents; for every slave over ten and under fifty years, fifty cents: *Provided*, That all slaves, which, from disease or otherwise, shall be valueless, shall not be liable to taxation; for all free negroes and mulattoes over twenty years and under sixty years, one dollar. Where the tax paid on real or personal property by the head of such family exceeds the sum of one dollar, the females of such family shall not be taxed. For all white males over twenty-one and under forty-five years, twenty-five cents; for all pleasure carriages and harness, fifty cents for every hundred dollars' value of the same, to be estimated by the person giving in the same, under oath; for every horse kept exclusively for racing, twenty cents for every hundred dollars' value, to be estimated by the person giving in the same, on oath; for every stud horse or jackass, the amount for which such stud horse or jackass stands for the season; for every horse kept exclusively for the saddle or harness, fifty cents, each; for every public racetrack, twenty dollars; for every head of neat cattle, owned in this state by any person residing in or out of this state, over forty head, (work-oxen excepted,) one cent per head; for every gold watch kept for use, fifty cents; for every silver watch kept for use, twenty-five cents; for all gold safety chains worn by male persons over twenty-one years, fifty cents; for every clock, the work of which is metal, and kept for use, twenty-five cents; "for every clock of any other description, kept for use, twelve and one-half cents; and for every pack of playing cards, used, sold, given away, or otherwise disposed of, one dollar.

*Id. Sec. 4.*  
Tax on  
slaves,

free negroes  
and mulat-  
toes,  
(females  
may be ex-  
empt);

white males;  
pleasure  
carriages  
and harness,

race horses,

stud horses,  
and jackass-  
es, saddle or  
harness

horses, pub-  
lic racetrack,  
neat cattle;

gold and sil-  
ver watches,

safety  
chains, and  
clocks;

[a 1835—(21)  
Sec. 3.]

and playing  
cards.

§ 11. Upon all goods sold at auction, except such goods as may be sold by execution, or order or decree of any of the courts of this state, or by virtue of any mortgage, with power of sale or deed of trust, there shall be assessed and collected two per centum on the amount of sales; upon all moneys loaned at interest to any person in this state or out of it, one-fourth of one per cent.; upon all moneys used or laid out in what is usually termed shaving, or in the purchase of promissory notes, judgments or other securities for the payment of money, thirty cents for every hundred dollars' amount of paper, notes, judgments or other securities so purchased or shaved; upon all moneys or credits used in the purchase of the bills of any of the banks of the state of Alabama, or any other bank bills, or in the purchase or sale of domestic or foreign bills of exchange or checks, drafts or certificates of deposit, fifty cents for every hundred dollars so used; and all factors, (domestic or foreign,) commission mer-

*Id. Sec. 5.*  
Tax on goods  
sold at auc-  
tion, except  
those sold by  
execution, or  
order or de-  
cree of court,  
or mortgage;  
on moneys  
loaned at in-  
terest,

or used in  
shaving,

buying  
promissory  
notes, judg-  
ments or  
other securi-  
ties for pay-  
ment of

money;  
on moneys



or credits used in purchase of bank bills, in purchase or sale of domestic or foreign bills of exchange or checks, drafts or certificates of deposit; on factors, commission merchants, cotton brokers and auctioneers; on merchandise, except state manufactures. Penalty on persons failing or refusing to give true statement of amounts to be assessed.

*Ib. Sec. 6.*  
Tax on gambling tables.

Ball alleys.

Penalty for refusing to give them in to assessor.

*Ib. Sec. 7.*  
Tax on tavern-keepers, retailers of spirituous or fermented liquors. On museums, wax-works, feats of activity, &c.

*Ib. Sec. 8.*  
Tax on owners and keepers of cotton ware-houses

*Ib. Sec. 9.*  
Tax on theatres.

Penalty for failure or refusal to pay.

*Ib. Sec. 10.*  
Tax on hawkers and peddlers. Court of roads and revenue may impose additional tax. *a See post, § 26.*  
Proviso.

chants, cotton brokers and auctioneers, shall pay twenty-five cents for every hundred dollars' amount of their commissions or brokerage accruing to them in their business as factors, brokers, merchants or auctioneers; upon every hundred dollars' amount of merchandise, domestic or foreign, (except such articles as are manufactured in this state,) sold from and after the passage of this act, there shall be assessed and collected the sum of twenty cents. And the several items of taxation, embraced in this section, shall be given in to the assessor, and paid by the persons liable for the same, as follows: computing from the passage of this act to the first day of May, eighteen hundred and forty-three, and thereafter from the first day of May of one year to the first day of May in the next succeeding year: and, if any person or persons, liable to pay tax under the provisions of this section, shall fail or refuse to give in a true account of the amounts hereby required to be assessed, by the twentieth of May in each and every year, it shall be the duty of the assessor, to assess the sum of one thousand dollars, and the collectors shall proceed to collect the same, together with such per centum as the county court shall have levied on the state tax, which sum shall be collected and paid over as other taxes.

§ 12. For every billiard-table kept for play, there shall be assessed and collected the sum of fifty dollars; and for every bagatelle-table kept for play, ten dollars; for every nine or ten pin alley, or other ball alley or table kept for play, ten dollars. And, in all cases, upon the refusal of the owner or keeper of the said tables or alleys to give in the same, the table or alley, so kept for play, shall be liable to be seized and sold by the assessor for the payment of said tax.

§ 13. For each license to keep tavern in any city in this state, there shall be paid fifty dollars; for each license to keep tavern in any incorporate town or village, ten dollars; for each license to retail spirituous or fermented liquors, thirty dollars; for all licenses for public exhibitions or museums, wax-works, feats of activity, or other public shows, ten dollars.

§ 14. All owners and keepers of ware-houses, where cotton is received on storage, shall be required to pay on each bale of cotton so received on storage, one mill, which amount shall be given in to the assessor, in the same manner, and subject to the same penalties, as is prescribed in relation to factors and others, in the fifth section of this act.

§ 15. On all established theatres used for public exhibitions or performances, there shall be assessed and collected fifty dollars; and, in case the owner, or person in possession, or manager, shall fail or refuse to pay the same to the tax-collector of the county where such theatre may be located, on or before the first day of August, in each and every year, it shall be the duty of such collector to levy on and sell such theatre, or so much of the property appertaining to the same as shall be necessary for the payment of the tax.

§ 16. For every license granted to any hawker or peddler to peddle in any county in this state, there shall be paid fifty dollars, for each wagon, cart or carriage by them used or employed for peddling; and the county court of roads and revenue are hereby authorized to impose such additional tax<sup>a</sup> on the license of hawkers and peddlers, as they may deem proper; but the said courts shall levy upon all other license the same per centum that they levy upon the state tax: *Provided*, That nothing in this section shall be so construed, as to compel such persons, as have been heretofore permitted by the gene-



ral assembly, to hawk and peddle in certain counties of this state, free of taxation, to pay tax in the same.

§ 17. All transient merchants, or transient dealers in drugs or patent or other medicines, shall, before they sell or vend any goods, wares or merchandise, or any drugs or patent medicines, in any county in this state, apply to the clerk of the county court of such county, and obtain a license, for which such person so applying shall pay the clerk the sum of twenty dollars : and if any transient merchant or dealer in drugs, patent or other medicines, without license as aforesaid, shall offer to vend or sell any goods or medicines, such person or persons, so offending, shall be proceeded against in the same manner as is now prescribed by law for proceeding against hawkers and peddlers for selling without license : and all persons, who shall vend any goods or medicines as mentioned in this section, shall be deemed to be transient, who do not settle for the year, to carry on the trade of buying or selling in the county or town in which the sales are made.

*Ib. Sec. 11.*  
Transient  
merchants or  
dealers in  
drugs or  
medicines.

Penalty for  
offering to  
sell without  
license.

Who are  
transient  
merchants,  
&c.

§ 18. No property shall be exempt from execution in the hands of a tax-collector for taxes.

*Ib. Sec. 14.*  
No property  
exempt from  
execution for  
taxes.

§ 19. The county courts of roads and revenue are hereby authorized to levy such per centum upon the state tax as they may deem proper : *Provided*, That such county tax shall, in no case, except in counties specially authorized by law, exceed thirty per cent. on the amount of the state tax ; and no claims against the county shall be received by the collectors in payment of county taxes, except the certificates of jurors.

*Ib. Sec. 15.*  
Court of  
roads may  
levy per cent  
on state tax.  
Certificates  
of jurors re-  
ceivable for  
taxes, but no  
other claims  
vs. county.

§ 20. Every person, who shall offer slaves for sale in any county in this state, as a merchant, dealer, trader or broker, dealing in that property, before he shall be authorized to make sale of any slave, he shall procure, from the clerk of the county court of the said county, a license, for which he shall pay fifty dollars, which shall authorize the sale in the said county for one year from the date : and every person, who shall make sale of slaves, in manner aforesaid, without such license, shall be proceeded against in the same manner as retailers of spirituous liquors without license ; and a want of such license shall be a defence in any suit commenced by said dealer, broker or merchant, for the price of any slave so sold : *Provided*, That this section shall not be so construed, as to apply to any citizen of the state, or his agent, selling his slave or slaves, who does not make a business thereof.

*Ib. Sec. 16.*  
Persons, offer-  
ing slaves  
for sale, to  
get license.

Penalty for  
selling with-  
out license.

§ 21. Slaves, who may be executed in pursuance of law, shall be paid for in the manner hereinafter provided.

Who may  
sell without  
license.

§ 22. To raise a fund for the purpose aforesaid, it shall be the duty of the assessor, annually, to assess a tax of one cent on all slaves under ten years, and two cents on all slaves over ten and under fifty ; and it shall be the duty of the tax-collector, to collect and return the same at the same time and in the same manner, they are compelled by law to collect and return the state tax ; and it shall be the duty of the treasurer, to keep said fund separate and distinct from the revenue of the state.

*Ib. Sec. 22.*  
Slaves executed by law  
to be paid for  
*Ib. Sec. 24.*  
How fund is  
to be raised  
for that purpose.  
To be collected  
and returned as  
state tax, &  
treasurer to  
keep it separate.

§ 23. All houses and lots of land, held by any incorporated academy in this state, shall not be liable to the payment of any taxes, for either state, county, or corporation purposes, so long as the same shall be held and occupied by any company for the purpose of schools.

1832—(7)  
*Sec. 2.*  
Incorporated  
academies  
exempted.

§ 24. On all shares of bank stock in any bank in this state, chartered by the authority of the same, or by the Alabama Territory, held by any individual, partnership, or body corporate, there shall be levied and collected, yearly, a revenue at the rate of fifty cents on

1827—(19)  
*Sec. 5.*  
Tax on bank  
shares.



Additional tax when banks refuse to pay specie. each share of one hundred dollars: *Provided, nevertheless,* That if any of said banks, chartered by this state or the Alabama Territory, shall refuse to pay specie for their notes, in that case there shall be levied and collected an additional tax of fifty cents on each share held as aforesaid, in any bank or banks so refusing to pay specie for their notes; and the president and directors, or cashier, on making out their last dividend for each preceding year, shall return the amount of taxes, and pay the same into the treasury of this state, and shall produce the treasurer's receipt on or before the second Monday in December, in every year; and on failure thereof, the president and directors of said bank, or any number of them in their corporate capacity, shall pay to the state two thousand dollars; and, in case of any such failure, it shall be the duty of the comptroller of public accounts, to direct the solicitor of the circuit in which such defaulting bank or banks may be, to proceed to the recovery of the same, on motion in the circuit court; the said comptroller of public accounts giving notice, in some newspaper published at the seat of government, Mobile, Huntsville, or Montgomery, to the said defaulting bank or banks, of the motion so to be made; and the certificate of said comptroller shall be deemed and taken as full and sufficient evidence of such default or failure.

When paid.

Penalty.

Defaulting banks, how proceeded against.

1835—(22)

Sec. 2.  
Tax on stud horses and jacks to be collected in one county only.

§ 25. The tax, imposed on stud horses and jacks, shall be collected on such of those animals as shall be in possession of any person or persons, within this state, after the first day of May, in each and every year; and such tax shall be collected but in one county only, in which such animals may stand, and the certificate of the tax-collector of any such county, that such animals have been given in to him, shall be sufficient to prevent the collection of the tax in any other county.

1837—(25)

Sec. 1.  
Court of roads, &c., to fix county tax on hawkers & pedlers

§ 26. The court of commissioners of revenue and roads in each county in this state, shall, at the first term thereof, to be held in each and every year, fix and prescribe the sum that shall be paid in each of said counties by every hawker or pedler of clocks or other goods, wares or merchandise, of any kind whatever, for a license for every wagon, pack-horse, carriage or cart, by them employed for peddling, for each and every year they may use or employ the same in the county where the license may be granted; which sum shall, in no county, be less than fifty dollars, and shall be paid into the county treasury: *Provided, however,* That this act shall not be so construed, as to make any person or persons liable to tax for dealing in or selling any goods or yarns manufactured in this state.

State manufactures exempted.

*Ib.* Sec. 2.

Penalty on hawkers and pedlers for selling without license.

§ 27. In case any hawker or pedler shall barter, exchange, or sell, either absolutely or for a limited time, any clock or clocks, or other goods, wares and merchandise, of any kind whatever, without first taking out a license, agreeably to the first section of this act, from the clerk of the county court of the proper county, he shall forfeit and pay for each and every article he shall sell, the sum of two hundred dollars, to be recovered by indictment in the circuit court of the proper county for the use of said county; and all bonds, notes or promises made to any hawker or pedler as aforesaid, the consideration of which shall be for any clock or clocks, or other goods, wares or merchandise, of any kind whatsoever, shall be utterly void, unless the party selling the same shall first have procured a license; and if any person shall purchase any clock or any goods, wares, and merchandise, of any hawker or pedler, who shall not have procured a license at the time of the making of such sale according to the provisions of this act, and the person making such purchase shall have

How recovered.

Certain bonds & contracts void.



paid for the article purchased, he may, at any time within twelve months thereafter, sue for and recover back the amount paid, with costs, before any court or justice of the peace having cognizance of the sum to be sued for. Money paid to unlicensed pedler may be recovered

§ 28. Every person, who shall exhibit, or cause to be exhibited, for hire or emoluments, any museum, wax-works, feats of activity, sleight of hand, or any circus, shall first obtain, from the clerk of the county court of the county where the same may be exhibited, a license authorizing the same; for which the party applying shall pay to the clerk fifty dollars, for the use of the county, together with two dollars, as a fee for issuing the same; and every person, who shall exhibit, as aforesaid, without first obtaining such license, shall forfeit and pay the sum of two hundred dollars, to be recovered by indictment in the circuit court of the proper county, for the use of the proper county, fifty dollars of which, however, when collected, shall be paid over by the officer collecting the same, to the prosecutor, and the prosecutor shall not, by reason thereof, be rendered incompetent to give evidence: *Provided*, That nothing in this act shall be so construed, as to prohibit the exhibition of any menagerie of animals. *Penalty for exhibiting without license.*

§ 29. The clerks of the county courts, of the several counties of this state, are hereby authorized to issue license under the first section of this act, and to receive, as a fee for each license issued, the sum of two dollars. *County tax on museums, wax-works, feats of activity, sleight of hand and circus.*

NOTE.—The real and personal estate of the University of Alabama, and the persons of all officers, servants, and students, attached thereto,—and all churches and the lots on which they are erected, not exceeding two acres, are exempted from taxation. See “University,” and “Religion.”

#### ASSESSMENT AND COLLECTION OF TAXES.

§ 30. Every person shall be liable to pay taxes upon all property, both real and personal, of which he shall stand seized, or have in his custody, either as attorney, agent, guardian, executor, or administrator, subject to taxation, on the first day of March in each year; and every person, who shall sell and convey away, any property, either real or personal, after the first day of March, shall give in a list of the same, with his or her taxable property for that year. *1821—(34) Sec. 11. Persons holding property on first of March liable for its tax.*

§ 31. If any person shall remove property liable to taxation, within the limits of this state, previously to the first day of March in any year, such property shall not be liable to taxation, if the owner of such property can produce a receipt to the assessor, showing that taxes have been paid on the same, in the state from which the property may have been removed, the same year. *1827—(19) Sec. 14. Property exempt, if tax has been paid in another state before 1st of March.*

§ 32. From the first day of April to the first day of July,<sup>a</sup> in every year, is hereby established as the time when the list of taxable property shall be given in, by every person living in this state, who is liable to pay taxes; which list shall contain an enumeration of the taxable property in his or her charge, within said county; and in the account of the lands, the particular description of the situation and quality of the same, and to what class it belongs; also each town lot of land, with the dimensions of and improvements thereon; also the amount of sales of all merchandise sold within the year ending on the first day of March immediately preceding the time at which the assessors are herein directed to commence the duties of their office; and the assessor shall state, in the last column of his *1821—(34) Sec. 4. Taxable property to be given in from 1st of April to 1st of July. a But see Sec. 11, ante.*



Assessor to state total amount. Delinquents liable to additional charge.

Persons sick or absent, may send a sworn list.

Return by agent.

*Ib. Sec. 5.* Assessor to advertise days of giving in taxables.

*Ib. Sec. 6.* List to be given in on oath

administered by assessor.

1827—(19)  
*Sec. 15.* Penalty for receiving list unless on oath.

1821—(34)  
*Sec. 16.* Assessor's receipt.

1815—(15)  
*Sec. 5.* Assessor may leave a written notice.

Penalty on delinquents.

Taxable property out of county of owner's residence, how rendered.

1827—(19)  
*Sec. 12.* Persons removing after first April, where to make return.  
*Ib. Sec. 14.* Town property not given in, may be valued by assessor, and taxes collected.

list, the total amount of the taxes due from each person chargeable with taxes. And all persons, failing to make return of their taxable property as aforesaid, shall be deemed delinquents, and shall pay the assessor or collector fifty cents, as a compensation for having to go to the place of residence of such delinquent, for a list of his or her taxables, or the amount of taxes due from such delinquent: *Provided*, That in case of sickness, or absence on business from the county, of any person having or owning taxable property, it shall be lawful for such person to send his list of taxables to the assessor and collector, sworn to before any justice of the peace in the state; or any person may render his list of taxables, sworn to by his agent.

§ 33. It shall be the duty of the assessors, to advertise, at three public places in each captain's beat, at least ten days previous to the days herein established, for giving in taxable property; and it shall be the duty of the said assessors, to attend at the muster ground in each captain's beat, two days of the time of giving in the list of taxable property.

§ 34. At the time of giving in to the assessor a list of taxable property, the person, giving in the same, shall take the following oath or affirmation, to wit: "I, A. B., do solemnly swear, (or affirm) that the list of taxable property which I have charge of in the county of ———, subject to taxation, contains a true statement, to the best of my knowledge and belief: So help me God." Which oath the assessor is authorized to administer to the person giving in the list.

§ 35. The assessor and tax-collector shall not, in any instance, receive any list of taxable property, unless on oath; and for every failure on his part to require such oath to be made, he shall forfeit and pay the sum of twenty dollars; one half to the use of any person suing for the same, and the other half for the use of the state.

§ 36. The assessor shall deliver to each individual whose property he assesses, a concise statement of the property assessed, and the amount; which he shall date and sign.

§ 27. If any assessor shall go to the house or usual place of abode, of any person within his county, who hath in his or her charge any taxable property, and shall not find such person at home, he may leave a written notice at the place of residence of such person, requiring him or her to give in to him, on or before the day on which the assessor is directed to finish receiving lists of taxable property, his or her taxable property: and if such person fail to comply with the requisitions of said notice, he shall be considered as a delinquent, and shall be doubly taxed, according to the best information that the assessor can obtain: *Provided*, Where any person holds taxable property in any other county than that in which he resides, and hath no agent in said county to give in the same, he may send to the assessor of such county, a list of his property in such county, subject to taxation, sworn to before, and certified by, some justice of the peace.

§ 38. If any person shall remove from the county in which he may reside, after the first day of April in any year, without returning to the assessor a list of his taxable property, he shall return such list to the assessor of the county to which he shall remove.

§ 39. In case of the neglect or refusal of any person or persons, to give in a list of their town property, it shall be the duty of the assessor to value the same; and the collector shall collect the amount of tax due thereon, in the same manner as if the same had been given in by the owner or owners thereof.



§ 40. Should any person or persons refuse or neglect to give in his, her, or their list of taxable property, on application of the assessor and collector of taxes, within the time prescribed by law, he, she, or they, so neglecting or refusing, shall pay a double tax on all property so refused or neglected to be given in, to be collected and accounted for in the same manner as other taxes.

*Ib. Sec. 16.*  
Persons refusing to give in, on application, liable to double tax.

§ 41. It shall be lawful for the assessor and collector for the county of Mobile, to commence assessing and collecting the taxes within the corporate limits of the city of Mobile, on and after the first day of March in each year.

*Ib. Sec. 17.*  
Collector may commence in Mobile after first March.

§ 42. No collector shall be authorized to collect any tax, until the assessment shall have been completed, and a list thereof returned to the clerk of the county court of his county.

1824—(32)  
*Sec. 14.*  
Collection after assessment is completed.

§ 43. The respective assessors and collectors shall proceed after the first Monday in July, in every year, to collect the taxes, and shall pay into the public treasury, all moneys which may be due from them, respectively, on or before the second Monday of December, in every year.

1821—(34)  
*Sec. 9.*  
When to commence. When paid into the treasury.

§ 44. The tax-collectors shall receive, in payment of the taxes imposed by law, any gold or silver coin, or warrants issued on the treasury of this state, or the bank bills or notes of such banks within this state as pay specie for their notes, and all other bank bills or notes that may be received in the land-offices of the United States for this state.<sup>1</sup>

*Ib. Sec. 14.*  
Kind of money receivable for taxes.

§ 45. The governor of this state, on receiving information which can be accredited, of the refusal, or stoppage, or failure, of any bank or banks either within or without this state, to pay specie for their bills or notes, shall direct the comptroller to issue circulars to the several tax-collectors in this state, apprising them, respectively, of such refusal, stoppage, or failure, on the part of such bank or banks to pay specie as aforesaid.

*Ib. Sec. 15.*  
Governor to notify comptroller, of banks stopping specie payments. Comptroller to issue circulars to collectors.

§ 46. If any collector shall demand and receive of any person, more money than he shall be entitled to demand and receive, under color of his office as collector, he shall forfeit to the party aggrieved, three times the amount of the same so extorted, recoverable in any court having competent jurisdiction, together with costs.

1815—(15)  
*Sec. 16.*  
Penalty on collectors for extortion.

§ 47. When any person or persons, liable to pay taxes, may, after being assessed, remove from the county in which he, she, or they may have been so assessed, not having paid their taxes, the collector of the county in which he, she, or they may have been so assessed, is hereby required to send, certified under his hand, a transcript from his tax-list, to the collector of the county where such delinquent or delinquents may be; and the collector of such last mentioned county is authorized, upon such transcript, to proceed to make the money by distress and sale, or otherwise, and immediately transmit the amount so made to the collector who sent the said transcript; for which services the collector, making the said money, shall receive the compensation allowed by law for similar services.

*Ib. Sec. 22.*  
Persons removing after assessment, certificate to be forwarded,

and distress and sale made.

§ 48. If any assessor, or collector, shall be sued for any matter or thing done in pursuance of the powers given in this act, he may plead the general issue, and give this act and the special matter in evidence.

*Ib. Sec. 19.*  
When sued, he may plead the general issue, &c.

§ 49. All persons, who may be appointed to collect the taxes of any county in this state, are hereby authorized and empowered to

1821—(34)  
*Sec. 13.*  
Collector may collect arrearages due his predecessor.

<sup>1</sup> See "Bank of the State of Alabama," § 13.



collect all arrearages of taxes, that may remain unpaid, to the persons appointed to collect the same; under the same regulations as are prescribed for the collection of taxes in other cases.

1815—(15)  
Sec. 11.  
List of taxes  
to have the  
force of an  
execution.  
after the first  
Sept.  
[a 1821—(34)  
Sec. 10.]  
Notice of  
sale of goods  
and chattels.

§ 50. All lists of taxes shall be considered as having the force and effect of an execution; and it shall be lawful for all assessors and collectors of taxes, from and after the first day of September in each year, to proceed to make distress and sale of the goods and chattels, lands and tenements, of all persons in arrear for taxes: *Provided*, That notice of such sale shall have been given, by advertisement at the door of the court-house of the proper county, and at least two other public places within the county, at least ten days previous to the day of sale, where the distress shall be of the goods and chattels; and where the delinquent has no goods and chattels within the county, then the lands and tenements of said delinquent, within the county, may be sold by the collector, or so much thereof as will be sufficient to satisfy and pay the amount of taxes due from such delinquent, together with all costs and charges accruing thereon: *Provided*, That the collector shall have given, in the nearest newspaper published in this state, in the case of residents within the same, at least three months' notice, and in the case of non-residents, at least six months' notice, of the time and place of sale, previous to such sale: which notice shall contain a particular description of the land for sale; on what water-course it is; and by what lands the same is bounded; and to whom the same was granted, or by whom the same is now owned or claimed. And when real property is sold, the sale shall always be at the court-house of the proper county; and there shall not be sold in one lot, more than three hundred and twenty acres of land; but if one lot shall not sell for the amount of taxes due from the delinquent, together with all costs and charges that shall have accrued thereon, the collector shall sell as many lots or parts of lots, as shall raise the full amount due; but in no case shall the collector sell any more land than shall be sufficient to raise such sum as shall be due: and the collector shall be entitled to demand and receive, from each delinquent whose property shall have been advertised, in addition to his other compensation for collecting the taxes, a commission of five per centum upon the amount raised or to be raised; and when the collector shall sell real property, two dollars for each deed of conveyance: *Provided*, That, if the land of any person under age or insane be sold, it shall be redeemable, at any time within one year after such disability be removed, upon repaying the amount that the purchaser may have paid, inclusive of subsequent taxes paid on said land, with interest thereon at the rate of six per cent. per annum, until the time of redemption.

Notice of  
sale of lands.  
Residents.  
Non-resi-  
dents.

Description  
of lands.

Sales of  
lands to be at  
the court-  
house.  
Size of lots.  
How much  
to be sold.

Collector's  
commissions  
for selling.

Redemption  
of the lands  
of infants  
and insane  
persons.

1814—(16)  
Sec. 1.  
In what pa-  
pers notice  
may be pub-  
lished.

1815—(15)  
Sec. 12.  
Taxes to  
have prece-  
dence of all  
other incum-  
brances.  
Collector  
may distress  
where per-  
sons are  
about to  
remove.

a See § 50.

§ 51. It shall be lawful for all tax-collectors, other officers or persons, who by law are required to advertise any notice in any newspaper in this state, to publish the same in that paper which is most convenient to the person or persons thus required to advertise.

§ 52. The taxes, imposed by virtue of this act, shall be preferred to all incumbrances and securities whatever: and if any person, between the time of rendering a list of his taxable property to the assessor, and the time at which the collector is authorized to make distress, shall be about to remove without the limits of his county, the collector, upon receiving information thereof, shall immediately make distress of the goods and chattels of the person about to remove, sufficient to satisfy the amount of taxes that he may owe, and sell the same, upon giving the notice herein before directed, in the case of goods and chattels; and all taxes, assessed on any person or



persons under this act, shall be a lien upon his real property lying within the county in which the assessment was made, from the first day of January of that year.<sup>1</sup>

§ 53. Every collector of the state or county taxes, who shall sell any real estate to satisfy any tax imposed by lawful authority, shall execute to the purchaser or purchasers thereof, a deed of conveyance, immediately; which deed shall be good and effectual both in law and equity; and in every such deed, the collector making the same shall recite, that the real estate thereby conveyed, was sold for taxes, and the consideration; but no deed, given in manner aforesaid, shall be recorded, until the expiration of one year from the date thereof, but may, nevertheless, be proved; and, if the person, whose estate may have been sold and conveyed as aforesaid, or his or her heirs, executors, or administrators, or his or her agent or attorney, shall within the year tender to the purchaser, his or her heirs, executors, or administrators, or his or her agent or attorney, or in case of his, her, or their absence from the state, then to the collector of the taxes, who sold and conveyed such real estate, the consideration money paid for the same, and amount of all subsequent taxes that shall have been paid on such real estate, with interest thereon from the dates of such payments, at the rate as stipulated in the eleventh section of this act,<sup>2</sup> until such tender be made, the deed given for such real estate thus sold and conveyed shall be thereby vacated and made void, and the deed be given up.

Taxes assessed to be a lien on real property.  
*Id.* Sec. 20. Collector to make a deed for real estate sold.

Deed not to be recorded under one year.

Estate redeemable.

§ 54. When the time shall have expired within which the lists of taxable property are to be received, it shall be the duty of the assessor of taxes to ascertain whether there be any lands or town lots within his county, sold under the authority of the United States, previous to the first day of September, one thousand eight hundred and nineteen, which have not been assessed; and in case any such be found, which have not been forfeited, he shall assess the same according to the rate of assessment prescribed by law on town lots and lands, for which a complete title has been obtained, and such lots or lands shall be doubly taxed.

1827—(19)  
 Sec. 8. Lands and lots sold previous to the first Sept. 1819, not given in, to be doubly taxed.

§ 55. The collectors of taxes in the several counties shall, at the time and in the manner prescribed by law,<sup>3</sup> make distress and sale of the goods and chattels, lands and tenements of all delinquents, in making returns of taxable property, or in payment of taxes; and in cases of taxes assessed, in the manner directed in the preceding section, on lands or town lots, to which a complete title has not been obtained, and in which other property sufficient to satisfy the taxes due, together with all costs and charges accruing thereon, cannot be found, it is hereby expressly made the duty of the respective collectors of taxes, to give notice, by advertisement at the door of the court-house of the proper county, and at two other public places within the county, that, on a certain day, (which shall be at least

*Id.* Sec. 9. Where title is incomplete, and other property cannot be found, premises may be rented.  
 See § 43.

<sup>1</sup> Although the taxes imposed by this act, [1815—(15),] have been abolished by the various revenue laws passed from time to time, the provisions of this section are conceived to be of a permanent nature, and to apply to collections under the existing revenue laws, however modified. It is to be observed, that the latter clause, giving a lien on real property from the first day of January, is in accordance with a previous section of the act which rendered the owners or possessors of property on the first day of January, liable for the taxes of that year. Hence, if applicable to the present law, the reason and intention of the enactment, would create a lien only from the first day of March.—See § 30.

<sup>2</sup> The rate of interest here alluded to has been repealed. It is now fixed at twenty-five per centum per annum.—See § 57.



Terms of  
rent, and  
quantity to  
be rented.

Owner's  
right of  
entry.

Overplus of  
rent.

*Ib. Sec. 10.*  
Collector to  
convey use  
to party  
renting.  
Fee therefor  
two dollars.

Tenant in  
possession,  
when guilty  
of a forcible  
detainer.

*Ib. Sec. 11.*  
Collector to  
convey  
where title  
is complete.  
Owner's  
right of re-  
demption.

1811—(9)  
Sec. 4.  
Collector  
may adjourn  
sale when  
necessary,  
for want of  
bidders.

1843—(56)  
Sec. 12.  
A tax-col-  
lector to be  
elected in  
each county.

thirty days after the date of said advertisement,) he shall, at the court-house of his county, offer for rent the town lot or lots, or so much of the land or lots, (as the case may be,) and for such term, as may be necessary to satisfy the taxes due, and costs and charges thereon; and he shall accordingly offer for rent, to the highest bidder, until the first day of January succeeding the January immediately ensuing, the town lot or lots, or such portion of the lands, (as the case may be,) and he may designate, beginning, in the case of lands, with ten acres, or with as much less than ten acres as may be necessary to pay said tax and costs; or by adding ten acres thereto, as often as may be necessary, to obtain, by such rent, a sufficient sum to satisfy the taxes and costs; and in case the town lot or lots, or lands, cannot be rented for a sufficient sum on the terms aforesaid, they shall be offered for two years, from the first day of January immediately ensuing, or until a complete title to the same shall be produced, or the same shall be forfeited to the United States: *Provided*, That the production of a complete title shall, in every case aforesaid, entitle the owner to the possession of the premises, upon reimbursing the amount paid for taxes, and charges thereon, to the party by whom such payment has been made, and saving to the occupant the crop which may be on the premises; and should the rent in any case exceed the amount of taxes and charges, the right owner of the town lot or lots, or land, (as the case may be,) shall be entitled to receive the overplus.

§ 56. The collectors of taxes, respectively, shall, by an instrument of writing, convey to the party renting the premises as aforesaid, the use thereof for and during the time for which they were rented; and shall, in addition to the compensation allowed by law, be entitled to receive two dollars for executing every such instrument of writing; and such instrument, conveying the use of the premises as aforesaid, shall be good and sufficient both in law and equity: *Provided*, That whenever the collector shall find the tenant in possession, who may refuse to pay tax, or render possession of the premises, which may be thus taxed and unpaid, he shall have full power to proceed *instantly* in the same manner as is or may be authorized in cases of forcible entry and detainer; and the refusal of the tenant in possession, to render peaceable possession of the premises on demand, shall be considered as evidence of forcible detainer.

§ 57. The tax-collector shall be authorized, and he is hereby required, to convey by deed any land he may sell under the provisions of this act, when a complete title has been obtained: *Provided*, The owner or owners of any lands, sold for taxes, may redeem the same at any time within twelve months, by the proper owner or owners, or their agents, paying the amount of taxes and costs paid by the purchaser, with interest at the rate of twenty-five per centum per annum, from the day of sale until said redemption, and costs.

§ 58. Where any collector shall have advertised for sale any lands or tenements, to raise the taxes due, and the lands or tenements thus advertised could not be sold for want of bidders, he may adjourn any such sale, from time to time, until the same shall be sold; and any sale, made on any adjourned day, shall be valid, to all intents and purposes, as if the same had been made on the day mentioned in the advertisement.

§ 59. Annually, at each general election, there shall be elected by the qualified electors of each county, a suitable person as collector, whose duty it shall be to collect the state and county taxes for the next succeeding year: and it shall be the duty of the several tax-



collectors, who may be elected; before they enter upon the duties of their office, to give bond, with sufficient securities, as is now prescribed by law, in double the estimated amount of the state and county tax of said county.

§ 60. The several tax-collectors in this state shall receive the following compensation for assessing, collecting and accounting for the taxes by them collected, to wit: twenty per cent. on the first five hundred dollars; ten per cent. on the next five hundred dollars; five per cent. on the next thousand dollars; four per cent. on the next thousand dollars; and, on all sums over three thousand dollars, two per cent.; and for collecting and paying over the county taxes, five per cent., when the sum does not amount to two thousand dollars; and when the taxes amount to a sum over two thousand, and not exceeding five thousand dollars, four per cent.; and when the taxes amount to a sum over five thousand dollars, three per cent.: *Provided*, That no tax-collector shall receive any commission for receiving and accounting for the taxes arising from licenses.

*Ib. Sec. 13.*  
Compensation of tax-collectors.

§ 61. The judge of the county court and commissioners of roads and revenue in each county, shall, on the first Monday in March, annually, appoint a justice of the peace, or some other suitable person, in each beat, to assess the taxes in such beat, according to the provisions of this act; and said judge and commissioners are hereby authorized, at any time, to fill any vacancy in the office of assessor, in any way happening, and to prescribe the amount for which each assessor shall give bond, and to approve the securities thereto; which bond shall be made payable to the governor, and his successors in office; and should said judge of the county court and commissioners of roads and revenue, on said first Monday in March, fail to make said appointments, it shall be the duty of the judge of the county court, so soon thereafter as practicable, to assemble said court, which, when assembled, shall make the same.

Not to receive commissions on taxes from licenses.

*Ib. Sec. 17.*  
Judges of county court and commissioners to appoint, annually, a justice or other suitable person in each beat to assess taxes.

§ 62. Assessors shall first take an oath faithfully to discharge the duties of assessor, and shall then proceed to assess all the taxable property in their respective beats, upon the oath of the persons whose taxes are to be assessed; and in case such person shall fail or refuse to return his taxable property, on oath, or said assessor shall be dissatisfied with such return, he shall proceed to assess the same himself, or call on two disinterested freeholders to make such assessment under oath. Such assessor is authorized to administer all necessary oaths. Every person shall make return of his taxable property in the beat where he may reside. Any person, owning property in several beats of a county in which he does not reside, shall make a return thereof in any one of said beats, as he may choose. The assessors shall complete their assessments, and return the same to the clerk of the county court, by the first day of June, in each year. The assessor shall be entitled to fifty cents, to be paid by any person whose house he shall be required to visit to make his assessment. The assessor shall attend at least two days at the muster-ground in his beat, to make assessments, notice of which shall be given ten days beforehand.

To fill vacancy in office of assessor—to prescribe amount of bond, and approve securities.

*Ib. Sec. 18.*  
Assessors to take oath.

Also persons whose taxes are to be assessed.

Assessor may call on two freeholders to assess.

Property, where and when returned.

Other duties of assessor.

§ 63. On the return to the clerk of the county court of the assessments for each beat, it shall be his duty, by the first day of July in each year, to consolidate the same, keeping each beat separate, and make three copies thereof, one of which he shall hand to the tax-collector, one to the treasurer of his county, and forward the other forthwith to the comptroller of public accounts, filing the original assessments in his office, open to the inspection of the citizens of his coun-

*Ib. Sec. 19.*  
Clerk of county court to give tax-collector, county treasurer, and comptroller, each, 1 copy of the assessments, & file



original in  
office.

ty, for which said clerk shall receive such compensation as the judge of the county court and commissioners of roads and revenue, in each respective county, may allow.

*Ib. Sec. 20.*

Tax-collector to pay half of his commissions to treasurer to be divided among assessors.

*Ib. Sec. 21.*

Comptroller to send cl'ks a formula of the manner of assessments, annually.

*Ib. Sec. 22.*

If any person fail to give in his tax-list, the tax-collector shall, still, assess and collect.

1821—(34)

*Sec. 12.*

Penalty on assessor for making a false and fraudulent return.

§ 64. The tax-collector shall be required to pay over to the county treasurer, one-half of the commissions allowed him by this act, to be by the judge of the county court and commissioners of roads and revenue, distributed fairly and equitably among the different assessors, according to the labor and services each has rendered.

§ 65. The comptroller of public accounts shall, annually, by the first Monday in every March, make out and forward to the clerks of the county courts, a formula of the manner of assessments to be made according to law, a copy of which shall be furnished each person appointed assessor as aforesaid.

§ 66. The tax-collector shall be required to assess and collect the tax of any person taxed by this act, who may have failed to give in his tax-list to the assessor, whenever the same may come to his knowledge, and due return make thereof.

§ 67. If any assessor and collector shall make any false return of any list of taxable property, with a view to defraud the state or county of the revenue, he shall forfeit and pay double the amount of the sum, which it was his duty to have returned; and shall, moreover, be liable to a prosecution for fraud, and, on conviction thereof, shall be imprisoned not less than three months, by the verdict of a jury, and shall, forever thereafter, be rendered incapable of holding any office of profit, honor, or trust, within this state.

1815—(15)

*Sec. 13.*

County court to be held 2d Monday in September, to certify in solvencies,

§ 68. The judges of the county courts, shall, on the second Monday in September, in each year, hold at their court-houses, respectively, a special court for the purpose of examining the amount of insolvencies that may be returned by the collectors of their respective counties, and shall certify such allowance as to them may seem fair and just, to the comptroller of public accounts, who shall allow the same, so certified to the collector, in a settlement of his account.

and relieve against improper assessments.

The said court shall further have power to grant relief to such persons as may have been improperly taxed or over-taxed by the assessor, and, upon certifying the same, as in the case of insolvencies, the comptroller of public accounts shall allow the same to the collector in settlement of his account. And, if any person, to whom relief may be granted in the manner aforesaid, shall not have paid the same to the collector, he shall be exonerated from the same; and, if he shall have paid them, the collector shall refund the same amount to him; and the comptroller, at the time of settlement with the collectors, respectively, shall suspend any proceedings against any collector, for any amount of taxes due on lands that may be then advertised for sale, until after such day of sale.

Comptroller to suspend proceedings when land is advertised for sale.

1811—(9)

*Sec. 1.*

Where such court is not holden, &c., comptroller may make allowances on proof.

§ 69. When the special court, directed by the thirteenth section of the act entitled "An Act to raise a revenue," may not have been held in any county, or from any other cause the collector may not have had his list of insolvencies allowed and certified, the comptroller of public accounts is authorized and required to allow to the collector of such county, for all such delinquencies as shall be made satisfactorily to appear to him ought to have been allowed by such court.

*Ib. Sec. 3.*  
Court failing, next court to certify, but not a

§ 70. If the justices of any county court shall fail to hold a court as directed above, it shall be the duty of the next county court of such county, to make such allowance to the collector, as he may make appear to be reasonable and just: *Provided*, That the county



court shall not certify any account of insolvencies to any collector who may already have had one list of insolvencies certified. second list of insolvencies.

§ 71. The comptroller of public accounts is required to make an allowance to any collector of the revenue, for any moneys with which he may stand charged, and which may be made satisfactorily to appear were improperly assessed; and when any collector may use due diligence to collect the tax due from any person or persons, by exposing for sale, his, her, or their lands or tenements, and the same shall not have been sold for want of bidders, such collector shall not be bound to account for the same, until he may have collected the same. *Ib. Sec. 4.* Comptroller to make allowance for improper assessments. Indulgence to collector when land cannot be sold for want of bidders.

§ 72. If the person appointed to assess and collect the taxes should die, or otherwise be disqualified from performing the whole duties assigned to him, the duties performed by the assessors and collectors shall be paid in proportion to the labor performed by each, respectively. (1) 1821—(34) *Sec. 17.* Partial duties performed by assessor, or, to be paid in proportion.

§ 73. In case of vacancy, either by refusal to accept, or to give bond and security, death, resignation, or otherwise, it shall be the duty of the judge of the county court and commissioners of roads and revenue, to fill such vacancy, on giving ten days' notice of the time thereof: *Provided*, That, if the office of county court judge be vacant, the commissioners of roads and revenue shall make the appointment; and, if a majority of them cannot agree, the appointment shall be made by the clerk of the county court; and, if there be no clerk, by the justice of the peace residing nearest the seat of justice for the county in which such vacancy may exist. 1827—(6) *Sec. 7.* Vacancy in office of assessor and collector to be filled by judge of county court, &c.

§ 74. The tax-collectors in the several counties of this state, are hereby authorized to receive for taxes, due the said counties, such jurors' certificates, as shall be issued by the clerks of the circuit courts for said counties, or the certificates issued by the clerks of the county courts; and the said certificates shall be received and accreditd to the holders thereof, in lieu of money for the amount of such taxes, as may be assessed and due the said counties. 1840—(41) *Sec. 1.* Tax-collectors may receive jurors' certificates for taxes.

#### RETURNS AND PAYMENTS BY CLERKS.

§ 75. If any clerk shall fail to pay the money, arising from the tavern licenses by him issued, four weeks before the time the collector is required to settle his accounts at the treasury, he shall forfeit and pay double the amount of the tavern licenses by him collected; to be recovered by the collector before any court having jurisdiction thereof, and paid over by him to the state. 1821—(34) *Sec. 18.* Penalty on clerk for failing to pay money for licenses.

§ 76. It shall be the duty of the clerk of the county court in each county, to render, on or before the first Monday in November in each year, to the assessor and tax-collector of his county, a statement, on oath, of the amount of all the licenses granted by the county court, from which any revenue may have accrued to the state, together with the amount of all the licenses granted by himself to hawkers and pedlers, from the time of giving in the same in the preceding year, up to the said first Monday in November. 1826—(20) *Sec. 1.* Clerks to render to assessor and collector a statement of licenses granted.

§ 77. The clerks aforesaid shall transmit to the comptroller of public accounts, a duplicate of the statement furnished the assessor *Ib. Sec. 2.* and transmit to the comp-

(1) Various points respecting tax-collectors decided. *Armstrong & Pinkston v. the State. Min. Rep. 160. Wheat et al. v. the State. 1b. 199.*



troller a certified duplicate thereof. and collector, certified by the judge of the county court, (whose duty it shall be to certify the same,) on or before the third Monday in November, in each year.

*Ib. Sec. 3.*  
Statement to  
have force of  
execution.

§ 78. The statement, so furnished the assessor and collector, shall have the force of an execution, and the property of all kinds, both real and personal, of the clerk and his securities, shall be liable for the same, in case of failure to pay the amount due thereon.

*Ib. Sec. 4.*  
Penalty for  
failing to  
render  
statement.

§ 79. Any clerk, failing to render such statement to the assessor and collector, at the time and in the manner prescribed by the second section of this act, shall forfeit and pay for every such failure, the sum of five hundred dollars, to be levied and collected in the manner provided by law for the collection of the state and county taxes.

*Ib. Sec. 5.*  
Penalty for  
failing to  
transmit  
duplicate.

§ 80. If the clerk shall fail to furnish the comptroller with a duplicate of the statement aforesaid, on or before the time, and in the manner prescribed by the second section of this act, he shall forfeit and pay for each failure, the sum of five hundred dollars, to be levied and collected in the manner provided by law, for the collection of the state and county taxes, and the certificate of the comptroller, of such failure, shall be sufficient evidence to authorize the assessor and collector to distrain and sell the property, real and personal, of the clerk and his securities, for the amount of the forfeiture aforesaid.

*Ib. Sec. 6.*  
Compensation  
to assessor  
for collecting  
the forfeitures.

§ 81. The assessor and collector shall receive the same commissions on all moneys collected by him under the authority of this act, as he is entitled to receive on the collection of the state and county taxes, and he shall pay the same over to the state and county treasuries at the time he is required by law in the case of other taxes, and the same proceedings may be had against him to recover the amount due, as in the case of other taxes.

1840—(41)  
*Sec. 2.*  
Clerk of the  
county  
courts to receive  
state  
claims.

§ 82. It shall be the duty of the clerks of the county courts of this state, to receive, in payment for any dues that are now by law payable to them by virtue of their offices, and are county dues, any state claims, which, by law, are properly chargeable on said counties.

#### IMPORTERS OF GOODS.

1821—(13)  
*Sec. 1.*  
Non-resident  
importers of  
goods subject  
to the same  
tax as residents.

§ 83. All persons, not resident citizens of the state of Alabama, bringing in, or importing, goods, wares, merchandise, or other commodities for sale, shall, when the same are sold, pay such state, county, city, or town tax on the same, as persons residing in this state are now compelled by law to pay, unless the same be placed in the hands of an auctioneer for sale, and be afterwards sold by him.

*Ib. Sec. 2.*  
Importers to  
give in estimate  
on oath;

§ 84. All persons, bringing in or importing goods, wares, or merchandise, or other commodities as aforesaid, shall, previous to making sale thereof, by themselves or agent, deliver in, under oath, an estimate of the amount of value of all such goods, wares, or merchandise as he or they may bring in or import into the said port, subject to taxation by the existing laws, and pay over, to the clerks of the county courts of the counties in which the said ports may be, the said state, county, or city tax on the same; or enter into bond, in a sufficient sum with good and sufficient security, payable to the judge of the county court into which the same shall be brought, conditioned, that he or they will well and truly pay and satisfy such state, county, or city tax, as persons, residing in the state of Alabama, for all goods, wares, or merchandise, or other commodities, they may

and pay to  
clerk of  
county  
court the tax  
due, or enter  
into bond  
therefor.



actually sell, are now compelled to pay by law, on all similar sales of goods, wares, or merchandise, &c., which said clerk shall, where the amount of taxes shall be paid, pay the same over to the persons authorized by law to collect the said state, county, or city tax. And when bond and security shall be given, he shall place the same in the hands of proper officers for collection; and the amount thereof, when by him received, shall be paid over in manner above directed.

§ 85. The said clerks shall keep a book, in which they shall make regular entries of their proceedings, and publish once in every three months an estimate of all the taxes paid, together with the names of the persons who shall have paid the same, and they shall receive as compensation for their services in taking bond as aforesaid, the sum of fifty cents, and such per centum on all collections, as is allowed by law for collecting the state, county, or city tax; and should the said clerks refuse to perform the services required of them by this act, the judge of the county court, of the county where such refusal shall take place, shall forthwith appoint some fit person to perform said duties, who shall take and subscribe an oath faithfully to perform the services enjoined on them by this act; and enter into bond, with sufficient security, and in a sufficient sum, to ensure the correct discharge of the aforesaid duties, which bond shall be made payable to the judge making said appointment. And should the condition of any of the bonds, provided for and ordered to be taken by this act, be violated, prosecutions shall be forthwith instituted, and carried on to final judgment and execution in the name of the judge, to whom the same shall be given, and against the person or persons contravening the same.

§ 86. Every person, contravening the provisions of this act, shall forfeit and pay the sum of one hundred dollars for each offence; to be recovered in any court having competent jurisdiction of the same, one half to the use of the informer or person suing for the same, and the other half to the use of the county where the offence may be committed.

§ 87. It shall be the duty of all owners, consignees, or masters of vessels, before he or they shall sell, barter or exchange, or attempt to sell, barter or exchange, in the city of Mobile, any goods, wares, or merchandise, or other commodity or commodities from on board of any ship or vessel, arriving at the port of Mobile, from parts beyond seas, or from the wharves of said city, to make return, to the assessor and collector of taxes for the county of Mobile, whenever required by him, of the whole of the goods, wares, and merchandise, or other commodities imported by him, her or them, respectively, and intended for sale, barter and exchange, from on board of such vessels, or from the wharves of said city; and moreover, whenever so required by him, shall make just and faithful return of all his, her or their sales, and pay over, at the same time, to said assessor and collector, the same tax on the amount of his, her or their sales, which is now paid by resident citizens of this state, under the penalty for every failure, neglect or refusal so to do, of one hundred dollars, to be recovered in the name and for the use of this state, before any court having competent jurisdiction thereof: *Provided*, That nothing in this act shall be so construed, as to prevent auctioneers from selling at private sale their own goods, subject, however, to the same taxes as are now allowed by law, nor shall it apply to the sales of executors and administrators, sheriffs and con-

Clerk to collect and pay over.

*ib. Sec. 3.*  
Clerks to keep a record of their proceedings under this act.

Clerk's compensation.

Clerk failing to perform his duty, judge may appoint some other person.

*ib. Sec. 4.*  
Penalty for violating this act.

1828—(41)  
*Sec. 3.*  
Owners, &c., of vessels arriving at the port of Mobile, to return to tax-collector, when required, all goods, &c., imported.

and make return of sales.

Penalty.

Auctioneers may sell their own goods at private sale.



Proviso, as  
to boats.

stables: *Provided*, Nothing in this act shall be so construed, as to impose a tax upon any articles sold by boats trading up and down any river in this state.

#### AUCTION DUTIES.

1818—(16)  
Sec. 1.  
Certain sales  
at auction  
exempt from  
the payment  
of duties.

§ 88. Nothing, in this act<sup>1</sup> (*to regulate sales at auction*) contained, shall extend to any sale or sales, by auction, of goods, wares or merchandise, made pursuant to, or in execution of any rule, order, decree, sentence or judgment of any court of the state of Alabama; or made in virtue of any distress by law; or in consequence of any bankruptcy or insolvency pursuant to any law concerning bankruptcies or insolvencies; or made in consequence of any general assignment of property and effects for the benefit of creditors; or made by or on behalf of executors or administrators; or made pursuant to the directions of any law of the state of Alabama, touching the collection of any tax or duty, or disposal, by auction, of public property of the United States, or of the state of Alabama; or to any such sale or sales by auction, of ships or vessels, their tackle, apparel and furniture, or the cargoes thereof, which shall be wrecked or stranded within the state of Alabama, and sold for the benefit of the insurers or proprietors thereof.

1828—(41)  
Sec. 1.  
Private auc-  
tion sales  
subject to  
the same tax  
as public.

§ 89. All goods, wares, and merchandise, which may be sold by the public auctioneers, in the several counties of this state at private sale, shall be subject to the payment of the same tax, as if the same were sold at public auction, which tax shall be levied, collected and paid over by the several assessors and collectors of taxes, in the manner now provided by law for the collection of other taxes.

1829—(7)  
Sec. 1.  
Auctioneers  
to make re-  
turn of sales  
yearly to  
comptroller  
on oath, up  
to 1st No-  
vember.

§ 90. It shall be the duty of every auctioneer, to make out and forward to the comptroller of public accounts, on or before the second Monday in December in each year, a correct statement of the amount of all sales made by him at auction, subject to duties, during the twelve months immediately preceding the first day of November of the year in which such statement is made; which statement shall be accompanied by the affidavit of the auctioneer, his clerk or agent, sworn to before the judge of the county court, or, in his absence, before any justice of the peace of the county in which he resides, that the statement is a correct duplicate of the one furnished the tax-collector.

How sworn  
to.

*Ib.* Sec. 2.  
Forfeiture  
for not fur-  
nishing  
statement.  
How levied.

§ 91. On failure of any auctioneer to furnish the statement aforesaid, at or before the time required by the first section of this act, he shall forfeit and pay, for the use of the state, the sum of one thousand dollars, to be levied and collected by the tax-collector in the manner provided by law for the collection of the state and county taxes; and the certificate of such failure, by the comptroller of public accounts, shall have the force and effect of an execution, and the tax-collector shall distrain and sell any real or personal property belonging to the said auctioneer or his securities, which may be necessary to satisfy the forfeiture aforesaid, and the same shall be accounted for by the tax-collector, as other taxes.

<sup>1</sup> See title "Auctioneers,"—§ 1, 6, 7, 8, 9.



## COUNTY TAXES.

§ 92. All surpluses of money, due from any collector of any special county tax under any law providing for a county tax for a special purpose, after a full payment of all appropriations arising under such law, shall be for general county purposes, and shall, by the collector, be paid over to the county treasurer of the proper county; and, on failure to do so, the county treasurer of the proper county shall have the same mode of recovering any surplus arising as aforesaid, as is given him against collectors of general county taxes.

§ 93. Where any tax-collector has returned any delinquent, it shall be the duty of such tax-collector, or his successor, (if in his power afterwards,) to collect the tax of such delinquent, and make return thereof at the same time as above provided.

§ 94. For the purpose of providing a fund to defray county expenses, the sum of two dollars shall be taxed in the bill of costs, on all suits hereafter to be commenced in this state, and shall be assessed and collected at the same time and in the same manner as other costs of suits, and paid, immediately after collection, into the county treasury of the county wherein such suit was instituted.

§ 95. It shall be lawful for the judge of the county court, and commissioners of roads and revenue, in any county in this state, to direct the collector of the taxes to collect any current money circulating in their counties, in payment of county taxes, and the collectors shall collect according to such direction.

§ 96. If any person, authorized by law to collect the taxes in any of the counties of this state, shall fail to collect and pay the same to the county treasurer, within the time prescribed by law, the judge of the county court, if of his own knowledge, or on complaint of the treasurer, shall hold a special court within twenty days thereafter, to try such delinquent collector; and, if it appear that he has so failed to collect or pay over such taxes, said court shall enter judgment in favor of the treasurer against such collector and his security, or securities in office, for the amount of such county taxes so due and unpaid, together with ten per centum as damages on the amount: *Provided*, Ten days' notice shall be given to such delinquent collector and his security or securities. (1)

## TREASURERS.

## STATE TREASURER.

§ 1. A STATE treasurer shall be annually elected, by joint vote of both houses of the general assembly.

§ 2. The state treasurer shall perform the duties and be subject to the responsibilities heretofore appertaining to the office of territorial treasurer.

§ 3. The state treasurer shall keep his office at the place designa-

1809—(9)  
Sec. 1.  
Surpluses  
of county  
taxes raised  
for special  
purposes, to  
be applied to  
general  
county pur-  
poses.

1b. Sec. 7.  
Tax-collect-  
or's duty as  
to delin-  
quents.

1815—(5)  
Sec. 3.  
Tax of \$2  
imposed on  
all suits.

1821—(34)  
Sec. 20.  
County court  
to instruct  
collector  
what kind of  
money to re-  
ceive.

1839—(38)  
Sec. 10.  
If tax collect-  
or fail to col-  
lect and pay  
into county  
treasury, as  
law requires,  
judge of  
county court  
to hold spe-  
cial term, &c.

Proviso.

Con. Ala.  
Art. 4.  
Sec. 23.  
Appointment  
1819—(9)  
Sec. 6.  
Duties & re-  
sponsibilities  
1803—(8)  
Sec. 1.

(1) A motion in the name of the state will not lie against a tax-collector, for failing to pay over the county tax. (It should be in the name of the obligee in the bond, or his successor.) *Mayberry et al. v. The State*, 1 *Stevl. Rep.* 266.



Office at seat  
of govern-  
ment.  
Bond.  
[a 1811—(14)  
Sec. 1.]  
[b 1823—(37)  
Sec. 2.]  
Ib. Sec. 2.  
Condition of  
the state  
treasurer's  
bond.

ted by law for the sitting of the general assembly; and shall, prior to entering on the duties of his office, take and subscribe an oath of office, and give bond, "with at least two good and sufficient securities, payable to the governor for the time being, and his successors in office, in the penalty of one hundred thousand dollars.

§ 4. The condition of the state treasurer's bond shall be in the words, or to the effect following, to wit: "The condition of this obligation is such, that if the above bounden shall, from time to time and at all times, render a just and true account to the legislature of the State of Alabama, when by them thereunto required, of all the moneys, securities, stock, and other property of the said state which shall come to his hands, or be committed to his charge; and deliver the moneys, securities, stock, and other property of the said state in his hands, together with all documents, instruments of writing, papers and books belonging to, or, for the use of the said state, to his successor in office; and shall, well, honestly, and faithfully, perform all the duties of his office; and shall answer for all improper appropriations, waste, embezzlement, or destruction of the said moneys, securities, stock, property, documents, instruments of writing, papers, or books, which shall be done or committed by any person or persons, to be by him employed in the said office; then this obligation to be void, otherwise, to be and remain in full force and virtue." Which bond shall be executed before the governor, and with the oath thereon endorsed, filed in the office of the secretary of state.

To be filed in  
secretary of  
state's office.

Ib. Sec. 4.  
Adjustment  
of accounts  
when out of  
office.

§ 5. If any state treasurer die, resign, be discharged, or cease to hold his office; then such treasurer, or, if he be dead, his heirs, executors or administrators, shall fairly and regularly state the account, and deliver the moneys, securities, stock, property, instruments of writing, and books, of the state, in his possession, to the succeeding treasurer; who shall make report thereon to the legislature; and the said report, if confirmed by the legislature, shall be a discharge of the late treasurer's bond; which, in such case, shall be delivered to the said treasurer, or his heirs, executors, or administrators.

Ib. Sec. 5.  
General du-  
ties of trea-  
surer.

County trea-  
surers to be  
furnished by  
clerks annu-  
ally with ab-  
stracts of  
fines, &c.

Penalty on  
clerks for not  
furnishing,  
&c.

§ 6. It shall be the duty of the said treasurer to receive and keep the moneys of the state, to disburse the same agreeably to law, and take receipts for all moneys which they shall pay; and to keep accounts of the receipts and expenditures of the public money. And, for this purpose, they shall be furnished by the clerks of the several courts of justice, respectively, once in every year, with authenticated extracts from the records and dockets of their respective courts, of all fines, forfeitures, amercements, judgments, and orders entered into such courts, whereby moneys may be accruing or arising to the use of the state. And if any clerk, as aforesaid, shall neglect his duty herein, he shall be liable to pay a fine to the use of the county, in the discretion of the court where tried, not exceeding two hundred dollars, to be levied by complaint of the attorney-general, or any solicitor, and on conviction thereof had in any court of competent jurisdiction.

Ib. Sec. 6.  
State treas-  
urer to make  
reports to the  
legislature or  
governor, on  
matters re-  
ferred, & an  
annual re-  
port on the  
finances.

§ 7. It shall be the duty of the state treasurer to make reports and give information to the legislature of this state, or, in their recess, to the governor, in person, or in writing, as he may be required, respecting all matters referred to him, or which shall, in anywise, appertain to his office; and, generally, to perform all such services, relative to the finances, as he shall be directed to perform. And it shall, moreover, be his duty to prepare and lay before the general



assembly, at the commencement of each annual session thereof, a report on the subject of finance, containing estimates of the public revenue and public expenditures, for the purpose of giving information to the general assembly, in adopting modes for raising the money requisite to meet the public expenditures.

§ 8. It shall be the duty of the said treasurer, to state in fair books, the amount of moneys which he shall receive for taxes, impositions, debts, fines, penalties, forfeitures, or any other account whatsoever, for, or in behalf of this state; and which he shall pay in pursuance of acts of the legislature, in such manner that the net produce of the whole revenue, as well as every branch thereof, and the amount of disbursements, in payment of the several demands, may distinctly appear; and the state treasurer shall, from time to time, lay the same, and all other his proceedings, relative to his office, before the legislature.

*Th. Sec. 8.*  
The treasurer's account, how to be kept.

§ 9. The treasurer of this state is hereby appointed an agent on the part of the state of Alabama, to receive from the treasurer of the United States, or from such person or persons as may be appointed for that purpose, the whole, or any part of the three per cent. of the net proceeds of sales of lands made in this state, since the first day of September, eighteen hundred and nineteen.

1822—(31)  
*Sec. 1.*  
State treasurer appointed agent to receive the 3 per cent. fund.

§ 10. The treasurer of this state is authorized and required, to give a receipt or receipts, as treasurer, for so much of said fund as may be by him received; and the receipt or receipts, so given, shall be binding on this state for the amount so received.

*Th. Sec. 2.*  
Treasurer's receipt binding on the state.

#### COUNTY TREASURERS.

§ 11. There shall be elected in each of the counties of this state, by the commissioners' court of roads and revenue, a county treasurer, who shall hold his office for the term of three years, and, before he enters upon the duties of his office, enter into bond, with good and sufficient security, in double the amount of the estimated revenue of his county, payable to the judge of the county court, and his successors in office, conditioned in words, or to the effect, following, to wit: "The condition of this obligation is such, that if the above bounden shall, from time to time, and at all times, render a just and true account to the commissioners' court of roads and revenue of county, when thereunto required, of all the moneys, securities, stock, and other property, of said county, which shall come to his hands, or be committed to his charge, and deliver the moneys, stock, securities, and other property of said county, in his hands, together with all documents, instruments of writing, papers, and books, belonging to or for the use of said county, to his successors in office; and shall answer for all waste, embezzlement, or destruction of the said moneys, securities, documents, instruments of writing, papers or books, which shall be done or committed, by any person or persons which may be employed by him, in said office; and shall receive and pay out all moneys, according to the provisions of this act, then this obligation to be void, otherwise to remain in full force and effect;" which bond shall be approved by the judge of the county court, and deposited in the office of the clerk of the county court, with the following oath, taken and subscribed before some officer competent to administer the same, and endorsed on the back of said bond, to wit: "I, \_\_\_\_\_, do solemnly swear, (or affirm,) in the presence of Almighty God, that I will faithfully discharge the

1839—(38)  
*Sec. 1.*  
County treasurer to be elected by the commissioners' court of roads and revenue.  
To give bond, with security.  
Condition.

To be approved by county judge.

Treasurer's oath.



duties of county treasurer, imposed on me by law, to the best of my skill and ability, so long as I remain in office: So help me God." Whereupon, the said judge shall give him a certificate of his qualification, which shall be sufficient evidence of his right and authority to exercise and perform all the duties appertaining to his office.

*Ib. Sec. 2.*  
Treasurer to register claims, in what manner.

§ 12. It shall be the duty of the treasurer aforesaid, and each of them, to register, in a well-bound book, to be furnished by the county, all the authenticated claims which may be presented against said county, designating the date of the claims, and the date of filing the same, which shall be also endorsed on the claim, the name, number, and amount; also, in whose favor the same is; which shall be numbered and registered in the order in which they are received, and paid accordingly, and not otherwise.

*Ib. Sec. 3.*  
To open account with himself.

How it shall be kept.

To be laid before commissioners' court.

To report to same court indebtedness of county, and funds in hand.

*Ib. Sec. 4.*  
To give notice that claims will be satisfied.

*Ib. Sec. 5.*  
To receive, keep, and disburse moneys of county. Circuit and county clerks to report and pay to him. Treasurer to examine accounts, &c. of clerks and sheriffs.

*Ib. Sec. 6.*  
To report & give informa-

§ 13. The treasurers aforesaid, and each of them, shall open an account in said book with himself as treasurer, and shall debit the same with all moneys which he may officially receive, specifying particularly the source from whence received, the date of receiving, and on what account, and the amount, in distinct and separate items; and, in like manner, to credit the said account with all payments, (setting out the number of claim, date of filing, name, in whose favor, and amount,) and at the same time shall mark on the register the word "paid," opposite such claim, when the same shall be discharged; which account and register shall be laid before the commissioners' court of roads and revenue, at their first term in each and every year, with the account properly balanced, and if found to be correct, shall be entered of record, and a copy thereof posted up at the court-house door of such county; and, on striking the balance of such account, should there remain funds in the treasury, the same shall be carried to the debit of the treasurer, in a new account to be opened in like manner, as herein before directed; it shall be the duty of the treasurers aforesaid, and each of them, also, at the same time, to report to said court the amount which his county is indebted, or the amount of funds in his hands, as may appear from his book, which shall be likewise entered of record, and a copy thereof posted at the court-house door.

§ 14. On the first day of the term of the first circuit court, in each year, in the several counties in this state, should there be moneys in the county treasury, due to any person or persons, the treasurers aforesaid, and each of them, are hereby required to give notice, by advertisement at the court-house door, that their claims will be discharged on application.

§ 15. It shall be the duty of the treasurers of their respective counties, to receive and keep the moneys of their counties, to disburse the same agreeably to law, to take receipts for all moneys, which they shall pay to prosecute or bring suits for all debts or demands, which are or may be, due his county; and the county and circuit court clerks are hereby required to report and pay over to the treasurers of their counties, by the first Monday in November in each and every year, as now prescribed by law. The treasurers are also required, on or before the first of October in each and every year, to examine the accounts, dockets and records of the clerks and sheriffs of their respective counties, for the purpose of ascertaining whether any moneys, of right belonging to such county, are in their hands, and proceed against such officers, should the same not be paid over, as now provided by law.

§ 16. The treasurers, aforesaid, are hereby required to make reports and give information to the commissioners' court of roads and



revenue of their respective counties, in person or otherwise, whenever required, respecting all matters in any manner belonging to the duties of their offices, and perform all such duties touching the finances of the county as may be required.

§ 17. If any county treasurer shall die, resign, be discharged, or cease to hold his office, then such treasurer, or, if he be dead, his heirs, executors or administrators, shall fairly and regularly state the account, and deliver all the moneys, securities, stock, property, instruments of writing, and books of the county in his possession to the succeeding treasurer, who shall make a report thereupon to the next commissioners' court of roads and revenue thereafter, which, if confirmed by said court, shall be entered of record, and be a discharge of the late treasurer's bond, which, in such case, shall be delivered to him, his heirs, executors, administrators or assigns.

§ 18. Should a vacancy occur in the office of treasurer, in any of the counties of this state, the judge of the county court shall fill the same by appointment, under the restrictions provided in the first sections of this act, until the next commissioners' court thereafter, who shall proceed to the election of a county treasurer, as provided in the first section of this act.

§ 19. It shall be the duty of the circuit court clerks at the termination of all state prosecutions, on issuing certificates for witnesses in behalf of the same, where the state fails to convict, or the defendant, if convicted, is unable to pay the cost, (the court not taxing the prosecutor with the same,) to endorse and officially sign the same on said certificate, which shall be sufficient evidence, and not otherwise, that it is a county charge, and in all cases of change of venue in state cases, which may occur, where the state fails to convict, the county, where such suit was commenced, shall pay such cost as may be a county charge.

§ 20. If any of the county treasurers of this state shall, either directly or indirectly, by himself or agent, or through any other person or persons, purchase, deal in, or traffic, in any manner whatsoever, in any claim or claims, debts or demands, or any liability whatsoever, against the county in which he is treasurer, he shall be deemed guilty of a misdemeanor, and, on conviction thereof by indictment, shall be fined for each offence, not less than ten nor more than fifty dollars; and the circuit judges are hereby required to give this section in charge to the grand juries of the different counties.

§ 21. The several county treasurers of this state, and each of them, shall receive, from time to time, for their services, such compensation as may be allowed by the commissioners' court of roads and revenue, not to exceed ten per cent. upon the moneys which they may pay out.

§ 22. No person shall, at the same time, hold or exercise the office of clerk of the county or circuit court, or sheriff, and that of county treasurer.

§ 23. The books of the several county treasurers of this state shall be kept in conformity with the forms hereunto annexed.<sup>a</sup>

§ 24. If any county treasurer shall fail or refuse to pay any claim against the treasury, which he is bound by law to pay, when there are sufficient funds in the treasury to meet the payment of the same, judgment may be obtained against such treasurer, and his security or securities, on motion, he having had five days' notice thereof, either in the circuit or county court of the proper county, in the same manner that judgment is obtained against sheriffs and constables for failing to pay over money when collected.

*Ib. Sec. 7.*  
When treasurer dies or ceases to hold his office, what shall discharge his bond.

*Ib. Sec. 8.*  
Vacancy, how filled.

*Ib. Sec. 9.*  
Duty of circuit clerk, on issuing certificates to state's witnesses.

On change of venue, county of prosecution to pay costs.

*Ib. Sec. 11.*  
Treasurer not to deal in public claims.

Penalty. Judges to give this in charge to grand jury.

*Ib. Sec. 12.*  
Treasurer's compensation.

*Ib. Sec. 13.*  
Treasurer not to be clerk or sheriff.

*Ib. Sec. 14.*  
Books, how kept.

<sup>a</sup> See § 29.  
*Ib. Sec. 15.*  
Treasurer failing to pay over money, judgment may be obtained against him and securities.



*Ib. Sec. 16.*  
County judge  
&c. may ex-  
amine his of-  
fice, and re-  
move him,  
when.

*Ib. Sec. 17.*  
Suits by  
treasurer to  
survive to  
successor.

*Ib. Sec. 18.*  
Penalty for  
failure of du-  
ty.

§ 25. The judge of the county court and commissioners of roads and revenue shall have full power at any time to investigate the affairs of the treasurer's office, and remove such treasurer, when they believe the public interest requires it.

§ 26. If after the institution of any suit by the county treasurer, a successor be appointed before the same be ended, then such suit shall not abate, but shall be prosecuted in the name of said successor.

§ 27. If any county treasurer shall fail to comply with the duties required of him by this act, he shall forfeit, not less than one, nor more than two hundred dollars; to be recovered before any court having competent jurisdiction; one-half to the use of the proper county, and the other half to the person suing for the same.

1832—(31)  
*Sec. 3.*  
County court  
to appoint  
examiners of  
treasurers' books, &c.,  
annually.

§ 28. It shall be the duty of the judges of the several county courts, to appoint three fit persons, once in each year, to examine the books and vouchers of the county treasurers, and report the situation of the same, accompanied with a statement of all the claims which have been filed, and also all claims which have been paid off by said treasurers.

1839—(35)  
*Sec. 21.*  
Penalty on  
county judge  
for failing to  
appoint.

§ 29. If any judge of the county court of any county in this state, shall fail, refuse, or neglect to appoint three fit persons, once in each year, to examine the books and vouchers of the county treasurers, and report the situation of the same, accompanied with a statement of all claims which have been filed, and also all claims which have been paid off by said treasurers, as they are required to do by law, each judge, so failing, refusing, or neglecting, shall forfeit and pay the sum of three hundred dollars, to be recovered at the suit of any person, by an action of debt, in any court of competent jurisdiction; one half to the use of the person suing for the same, and the other half to the use of the proper county.

Form, in  
which treas-  
urer's ac-  
counts shall  
be kept.

| Register of the Claims and Demands against |                 |                       |     |                   |       | County.  |  |
|--------------------------------------------|-----------------|-----------------------|-----|-------------------|-------|----------|--|
| Date of claim.                             | When filed.     | Name of claim.        | No. | In whose favor.   | Am't. | Remarks. |  |
| 1st Oct. 1838.                             | 1st Nov. 1838.  | Order of Com'rs Court | 1   | Clerk Cir. Court. | \$50  | Paid.    |  |
| 4th June 1838.                             | 1st Sept. 1838. | Jury Certificate.     | 2   | A. B.             | 6     | Paid.    |  |

#### A. B., Treasurer, in account current with

County.

| To Cash received, as follows: |                  |                |       |                | By Cash paid out, as follows: |                         |                 |       |  |
|-------------------------------|------------------|----------------|-------|----------------|-------------------------------|-------------------------|-----------------|-------|--|
| Of whom received.             | On what account. | When received. | Amt.  | When filed.    | No.                           | Name of claim.          | In whose favor. | Amt.  |  |
| A. B.                         | Taxes for 1838   | 1st Nov. 1838. | \$100 | 1st Nov. 1838  | 1                             | Order of C.             | Clk Cir. C.     | \$50  |  |
|                               |                  |                |       | 1st Sept. 1838 | 2                             | Jury cert'e             | A. B.           | 6     |  |
|                               |                  |                | \$100 |                |                               | Bal. carried to new ac. |                 | 44    |  |
|                               |                  |                |       |                |                               |                         |                 | \$100 |  |

1840—(42)

*Sec. 1.*  
Treasurer to  
report annu-  
ally to first  
commission-  
ers' court,  
county debt  
and assets,  
and deposit  
copy in  
clerk's office.

§ 30. The county treasurer of each and every county, shall, in each and every year, at the first commissioners' court for said county, make a full and complete exhibit of the indebtedness of said county, and also the means to liquidate the same, so far as lies in his power; and also to make out a transcript, including the sum, and deposit it in the office of the clerk of the county court of said county, for the inspection of each and every person who may wish to examine the same.

*Ib. Sec. 2.*  
Clk to keep &  
exhibit copy.

*Ib. Sec. 3.*  
Treasurer  
not comply-  
ing with this  
act to be re-  
moved.

§ 31. It shall be the duty of said clerk, to take especial care of said copy, and exhibit it to each and every person or persons calling therefor.

§ 32. If any treasurer fail to comply with the provisions of this act, it shall be the duty of said court to remove said treasurer from office forthwith.



## TRESPASS.

§ 1. EVERY person, who, without leave of the owner, or other person having the same in care or charge, shall take away any boat or vessel, shall, for every such offence, pay ten dollars to the owner thereof, over and above the damages such boat or other vessel shall sustain, and over and above the expense of bringing back such boat or vessel, to be recovered, with costs, in any court of record. And when there shall be several offenders in one trespass, every person shall be liable for the whole penalty.

1807—(2)  
Sec. 6.  
Penalty for taking away boat or vessel without leave.

§ 2. If any person shall cut down, carry away, or destroy any cypress, white-oak, black-walnut, pecan, or cherry tree, upon any lands not his own, without first having the consent of the owner, he shall forfeit and pay the owner thereof, ten dollars for every such tree, so cut, carried away, or destroyed; and for every other tree, so cut, carried away, or destroyed, without leave as aforesaid, the sum of three dollars, except such trees as may be cut, or taken, out of or for the use of public roads.

Ib. Sec. 7.  
For cutting down, carrying away, or destroying timber on another's land without leave.

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 TRUSTEES.

§ 1. ANY trustee, appointed by will or by deed, may be removed by the circuit court of the county in which such trustee resides, or of the county in which the estate of which he or she is trustee shall be: *Provided*, Such notice as the court shall direct shall have been served on the trustee so to be removed.

1829—(10)  
Trustees may be removed by the circuit court.

§ 2. Any trustee, appointed by will or by deed, may resign his or her trust to the circuit court of the county in which such trustee resides, or in which the estate shall be, upon rendering a full and complete account of the estate and the management thereof: *Provided*, That all concerned shall have had due notice of the same, at least thirty days previous thereto.

May resign their trust to the circuit court, giving thirty days' notice.

§ 3. Upon the resignation or removal of any trustee, as provided for by this act, the circuit court of the proper county shall have full power and authority to appoint another trustee or trustees in the place of the trustee or trustees so resigning or removed.

Court to fill the vacancy.

§ 4. Any person interested may petition the circuit court, setting forth that the trustee or trustees have wasted or are about to waste the estate of which he, she, or they are trustees; and it shall, thereupon, be the duty of the court to cause notice to be given to such trustee or trustees of said petition, and to have summoned such trustee or trustees to answer the same; and if, upon trial before said court, it shall appear that the estate has been wasted, or is likely to be, said court may require bond and security of said trustee or trustees for the faithful management of said estate, and on his, her, or their failure to give such security, shall remove the trustee or trustees from office.

Remedy against trustees for waste.

§ 5. For the prosecution or defence of any suit in any of the courts of this state, the court, before whom such suit may be pending, may, on motion, appoint a trustee or trustees to prosecute or defend the same, in all cases where the same may be necessary.

Court may appoint trustee to prosecute or defend suit.



Trustees to make annual report to circuit court, or be removed.

§ 6. All trustees, appointed by will or deed, shall, once in each year, render to the circuit court of the proper county, an account of the management and situation of the estate, and, on failure so to do, shall be removed.

NOTE.—See “Judicial Proceedings in Chancery,” § 32 and 33.

## TWO PER CENT. FUND.

1841—(36)  
Two per cent. fund accepted on terms proposed by congress.

§ 1. IN pursuance of the seventeenth section of an act, entitled “An Act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights,” passed by the Congress of the United States, and approved the 4th September, 1841, the State of Alabama hereby accepts the relinquishment of the two per cent. fund, on the terms and conditions in said seventeenth section expressed.

How fund to be applied.

§ 2. The whole of the said two per cent. fund shall be faithfully applied, under the direction of the legislature of Alabama, to the connexion of some means of internal improvement of the navigable waters of the bay of Mobile, with the Tennessee river, and to the construction of a continuous line of internal improvement, from a point on the Chattahoochee river, opposite West Point in Georgia, across the state of Alabama, in a direction to Jackson, in the state of Mississippi; and so far as relates to the faithful application of said two per cent. fund to the purposes aforesaid, this act is hereby declared unalterable, without the consent of congress.

Cashier of state bank to receive and keep said fund.

§ 3. The cashier of the Bank of the State of Alabama, is hereby authorized and required, to demand and receive the said two per cent. fund, as the same may become due and payable; and shall keep the same on special deposit.

1843—(57)  
Sec. 1.  
To invest 1st instalment of said fund.

§ 4. The cashier of the Bank of the State of Alabama, is authorized to invest the sum of one hundred and nineteen thousand two hundred and seven, and sixty one-hundredths dollars, the first instalment of the two per cent. fund, already received, in the treasury notes, issued from the treasury of the United States, bearing interest at the rate of six per cent. per annum, and shall hold the same, and the interest accruing thereon, subject to the provisions of the law heretofore made.

Th. Sec. 2.  
To re-invest the interest thereon.  
1843—(62)  
Sec. 1 & 3.  
Part of said instalment to be loaned to Montgomery and West Point R. R. company, at 6 per ct. interest, when bond is given

§ 5. The cashier aforesaid shall receive and re-invest the interest that may arise on such notes.

Said money and interest secured by mortgage of real estate.

§ 6. The governor of the state of Alabama is hereby authorized and required, to direct the cashier of the Bank of the State of Alabama to pay out of the second instalment of the two per cent. fund, the sum of one hundred and twenty thousand dollars to the president and directors of the Montgomery and West Point Rail-Road Company, so soon as the said president and directors shall have executed their bond with good personal security payable to the governor of the state of Alabama for the time being, and his successors in office, conditioned for the faithful payment of said sum of money as aforesaid, at the expiration of ten years from the date of said bond, together with the interest which shall accrue thereon, payable annually at the rate of six per cent. per annum: *Provided*, That the payment of said sum of money, and the interest thereon, shall be further secured by mortgage on real estate, which bond and mortgage shall be approved by the governor aforesaid; *And provided, further*, That said company shall at the same time, execute



an additional bond payable to the governor aforesaid, in the penal sum of said loan, conditioned for the faithful application of said fund.

§ 7. The president and directors of said company shall make annual reports to the governor, immediately preceding the session of the legislature, of the extent of construction and condition of said road, and the amount of said fund expended, to whom paid, and for what purposes applied.

*Ib. Sec. 2.*  
President & directors to make annual reports to governor.

## UNIVERSITY.

§ 1. A SEMINARY of learning is hereby established, to be denominated, "The University of the State of Alabama."

1820—(14)  
University established.

§ 2. The governor, *ex officio*, the judges of the supreme court, and one trustee for each judicial circuit, except that in which the university is located, in which there shall be two, shall constitute a body politic and corporate, in deed and in law, by the name of "The Trustees of the University of Alabama;" and by that name, they and their successors shall have perpetual succession, and be able and capable in law, to have, receive, and enjoy, to them and their successors, lands, tenements, and hereditaments, of any kind or value, in fee or for life, or for years, and personal property of any kind whatsoever, and, also, all sums of money of any amount whatsoever, which may be granted or bequeathed to them, for the purpose of promoting the interests of the said university.

1821—(36)  
*Sec. 1.*  
Trustees to be elected.  
[a1843—(58)]  
Incorporated

§ 3. The trustees of the said university shall and may have a common seal for the business of themselves and their successors, with liberty to change or alter the same from time to time, as they shall think proper; and, by their aforesaid name, they and their successors shall be able to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all courts of law and equity within this state; and to grant, bargain, sell or assign, any lands, tenements, goods, or chattels, in such manner as is hereinafter specified; and to act and to do all things whatsoever for the benefit of the said institution, in as ample a manner as any person, or body politic or corporate, can or may do by law.

*Ib. Sec. 4.*  
Trustees to have a common seal.  
Corporate powers.

§ 4. No misnomer of the University of Alabama shall defeat or annul any gift, grant, devise, or bequest to the same: *Provided*, The true intent of the parties shall sufficiently appear upon the face of the gifts, grants, wills, or other writing, whereby any estate or interest was intended to pass to the said university; nor shall any misuser or nonuser of the rights, liberties, privileges, jurisdiction, and authorities hereby granted to the said university, create or cause a forfeiture thereof.

*Ib. Sec. 5.*  
Misnomer not to defeat bequests, &c. provided, &c.

§ 5. The trustees, or so many as shall be fixed on by their by-laws, shall have full power by the principal or professors of the said university, to grant or confer such degree or degrees in the arts or sciences, to any of the students of the said university, or persons by them thought worthy, as are usually granted and conferred in other universities in the United States, and to give diplomas or certificates thereof, signed by them and sealed with the common seal of the trustees of the university, to authenticate and perpetuate the memory of such graduation.

Rights not forfeited by misuser or nonuser.

*Ib. Sec. 6.*  
Trustees may confer degrees on students and others.

May give diplomas.



*Ib. Sec. 7.*  
No person  
debarred of-  
fice, &c. on  
account of  
religious per-  
suasion.

§ 6. No person shall be excluded from any liberty, liberties, immunity, office, or situation in said university, on account of his religious persuasion, provided he demean himself in a sober, peaceable, and orderly manner, and conform to the rules and regulations thereof.

*Ib. Sec. 8.*  
Governor,  
president *ex*  
*officio*, but  
trustees may  
elect president  
*pro tem*.

§ 7. The governor shall be, *ex officio*, the president of the board of trustees: *Provided, however*, That, in case he should not attend the meetings of the said trustees, the trustees shall elect a president *pro tempore*, who shall preside at such meetings.

*Ib. Sec. 10.*  
Trustees to  
report to le-  
gislation,  
site for uni-  
versity.

§ 8. The said trustees shall have power, and it is hereby declared to be their duty, upon a notice from the president of the board, to examine and report to the legislature, at their next session, such place or places, having a due regard to health and the fertility of the surrounding country, as shall appear to them most suitable for the location of the university; and the legislature shall, at the session when such report shall be made, proceed by joint ballot of both houses of the general assembly, to make a choice of the site for the university, which choice, when so made, shall not be subject to any alteration thereafter.

Legislature  
to make  
choice of site

*Ib. Sec. 12.*  
Trustees to  
have entire  
control of site

§ 9. The trustees shall have the entire control over the site thus selected for the university, and may lay off and sell such lot or lots to such persons, and upon such conditions, as they may think proper.

*Ib. Sec. 13.*  
May erect  
buildings.

§ 10. The trustees shall, so soon as the selection shall have been made as aforesaid, contract with a suitable person or persons for the erection of such buildings as they may deem necessary, for the purpose of carrying this act into complete effect.

*Ib. Sec. 19.*  
Trustees to  
take oath.

§ 11. Every trustee, elected or appointed by the provisions of this act, shall, before entering on the duties assigned him as trustee, take and subscribe the following oath, before some judge or justice of the peace, to wit: "I, ———, do solemnly swear, (or affirm,) that I will faithfully discharge the duties assigned me as trustee, to the best of my skill and ability, without partiality or affection: So help me God."

*Ib. Sec. 20.*  
To invest  
proceeds of  
land sales, &  
report finan-  
ces to legisla-  
ture.  
Capital stock  
not to be di-  
minished.

§ 12. The proceeds arising from the sales of the said lands,<sup>1</sup> shall be paid over to the trustees, and shall be by them vested in such funds as they may direct: *Provided*, It shall be their duty to report annually to the legislature, the financial situation of the institution; *And provided, further*, That the capital stock, arising from the sale of the lands as aforesaid, shall not be reduced in any manner whatever.

*Ib. Sec. 23.*  
Trustees  
may contract  
for buildings,  
&c.

§ 13. The said trustees shall have the power to contract for the necessary buildings, and to do every other act necessary to carry this act into complete effect.

*Ib. Sec. 24.*  
This act to  
be construed  
liberally.

§ 14. This act shall be deemed a public act, and judicially taken notice of, without special pleading, and the same shall be liberally construed, for fully carrying into effect the beneficial purposes hereby intended.

1822—(14)  
Sec. 5.  
Stated and  
occasional  
meetings.

§ 15. There shall be a stated annual meeting of the trustees, to be held at the time of conferring degrees, and the president of the university, together with two of the trustees, or three of the trustees without the president, shall have full power to call an occasional

<sup>1</sup> The university lands—for which a mode of sale was provided in sections 14, 15, 16 and 17 of this act. These sections are all superseded by the following act of 1822.



meeting of the board, whenever it shall appear to them necessary : *Provided*, That reasonable notice by mail or otherwise, be first given. Notice.  
 en to all the other trustees, specifying the cause or causes of such meeting ; *And provided, also*, That no business shall be transacted Proviso.  
 by the board, other than that specially assigned as the cause of the meeting, unless at least seven of the board shall concur therein.

§ 16. At all meetings of the trustees, a majority shall be capable of doing and transacting all the business and concerns of the university, except such as is herein excepted : they shall have the power of electing all the necessary and customary officers of said institution ; of fixing their several salaries, and of removing any of them for neglect or misconduct in office, a majority of the whole number of trustees concurring in said removal : *Provided*, That no permanent election of any officer shall be made, or salary be fixed, at any other than the stated annual meetings of the trustees ; but all elections, which shall be made at any called meeting, shall expire at the end of the next stated meeting ; they shall have the power of prescribing the course of studies to be pursued by the students, and of framing and enacting all such ordinances and by-laws, as shall appear to them necessary for the good government of the university, and of their own proceedings : *Provided*, The same be not repugnant to the laws of the United States and of this state.

§ 17. The head of the said university shall be styled the President, and the instructors, the Professors ; and the president and professors while they remain such, shall not be capable of holding the office of trustee ; and the president and professors, or a majority of them, shall be styled "*The Faculty of the University* ;" which faculty shall have the power of enforcing the ordinances and by-laws adopted by the trustees for the government of the students, by rewarding or censuring them, and finally by suspending such of them as, after repeated admonitions, shall continue disobedient or refractory, until a determination of the board can be had. And it shall be in the power of a majority of the trustees present, at a stated meeting, to expel any student or students.

§ 18. The title of the lands, which this state has received as a donation from the Congress of the United States, for a seminary of learning, is hereby vested in the said trustees and their successors in office, to be appropriated in the manner hereinafter directed, to wit : the said lands shall be sold at public auction at such times and places as the said trustees shall direct, or have by ordinance heretofore directed, at a price not less than seventeen dollars per acre ; one-fourth part of the purchase-money shall be paid down at the time of sale ; one-eighth part in one year thereafter, with interest at the rate of six per cent. per annum ; one-eighth part in two years after said sale, with interest as aforesaid ; and the residue of the purchase-money shall be paid at the expiration of eight years after said sale, with interest as aforesaid, payable annually, to commence at the day on which the third payment shall become due : *Provided*, That the said trustees shall have power to lay off town lots at any place they may deem expedient, and to dispose of the same on such terms and under such regulations as they shall prescribe : *Provided*, That the said lots, when so laid off, shall not sell for a less sum than the minimum price herein expressed. And each purchaser shall, moreover, at the time of said purchase, execute his bonds, payable to the said trustees and their successors in office, conditioned for the true and punctual payment of the purchase-money and interest thereon, according to the terms of said sale.

*Ib. Sec. 6.*  
 Majority may transact business.  
 May elect and remove officers, & fix their salaries.

Permanent elections, when made.

Trustees may prescribe course of studies & enact by-laws.

*Ib. Sec. 7.*  
 Style of the president & professors.

May suspend students.

Trustees may expel.

*Ib. Sec. 8.*  
 Lands vested in the trustees.

To be sold.

Minimum price.  
 Terms of sale.

Town lots may be laid off.

Purchaser to execute bonds.



*Ib. Sec. 14.*  
Trustees  
may rent un-  
sold lands.

§ 19. The said trustee shall have power to rent, from year to year, such part of the lands as shall not be sold at the public sales, as aforesaid, in such manner as they shall by ordinance prescribe, and the moneys, which shall be due thereon, shall be recoverable in such manner as shall be prescribed by law.

*Ib. Sec. 15.*  
Sales, by  
whom super-  
intended.

§ 20. It shall be the duty of the trustees, whenever a sale of lands is to take place, to appoint three of their own body, who, or any one of whom, together with such other trustees as may attend, shall be superintendents of said sale; and in case there shall be a failure of the agent to attend and conduct the sale, the trustees, so attending, shall have power to appoint another agent, and to take his bond and approve of his security; and the board of trustees shall have power, at all times, when they may deem it expedient, to remove any agent, and appoint another in his place.

Trustees  
may remove,  
and appoint  
agents.

*Ib. Sec. 16.*  
Estate not  
liable to be  
taxed.  
Exemptions  
of officers,  
students, &c.

§ 21. The estate, both real and personal, of the said corporation shall be free and forever exempt from taxes, and the persons of all officers, servants, and students, belonging to said university, shall, during their continuance there, be exempt from taxes, serving on juries, working on roads, and ordinary military duty.

*Ib. Sec. 20.*  
Sum appro-  
priated for  
payment of  
current  
expenses.  
Trustees to  
report state  
of funds to  
general  
assembly.

§ 22. The interest to be paid by the purchasers of the lands, or the lessees as aforesaid, or which shall be received from the stock which shall be purchased, as herein before directed, or so much thereof as may be necessary, shall be appropriated by the trustees, to discharge the current expenses of the university, and the trustees shall report to the general assembly once in each year, the state of the funds committed to their charge, with such recommendations, with regard to the improvement thereof, as to them shall seem advisable.

*Ib. Sec. 22.*  
Trustees  
may sue oc-  
cupants  
without  
lease.

§ 23. The trustees shall also have the power to sue for and collect all sums of money which are now due, or which may hereafter become due from such persons as have occupied or hereafter shall occupy any of the lands hereby vested in said trustees, without a lease from said trustees.

Dec. 26, 1822.  
*Sec. 1.*  
Compensa-  
tion of  
trustees.

§ 24. The trustees of the state university are hereby allowed the sum of three dollars, each, for each day they may be engaged in their duties as trustees aforesaid; also, the sum of three dollars for every twenty-five miles traveling to and from the place of their meeting.

*Ib. Sec. 2.*  
Paid out of  
university  
funds.  
Proviso.

§ 25. Said allowances shall be paid out of the university funds: *Provided*, That trustees, who are members of the legislature, shall not receive any pay for their services as trustees, whilst they are in attendance as members of the legislature.

1823—(37)  
*Sec. 2.*  
State treas-  
urer to re-  
ceive and  
keep univer-  
sity funds.

§ 26. It shall be the duty of the treasurer of this state, to receive and safely keep, all moneys that may be paid over to him by order of the board of trustees, subject to their order: *Provided*, That the bond now required of the treasurer of this state for the faithful discharge of the duties of his office, shall be given in the penalty of one hundred thousand dollars, which shall operate as security for the safe-keeping, as well of any funds belonging to the university of this state, that may be at any time deposited in the treasury of this state, as of moneys paid into or deposited in the said treasury on other accounts.

1843—(58)  
*Sec. 1.*  
Governor to  
be a member  
of board of  
trustees, &c.

§ 27. The governor of the state of Alabama for the time being, and his successors in office, shall be a member of the board of trustees for the university of Alabama, and he shall, *ex officio*, be the president of the same.



§ 28. The judges of the supreme court of the state of Alabama, for the time being, and their successors in office, shall severally be members of the board of trustees aforesaid.

§ 29. In addition to the persons herein before named, there shall be elected, in the manner hereinafter prescribed, one trustee for each of the judicial circuits, that may be established in the state of Alabama, except the circuit in which the university is located, in which there shall be elected two.

§ 30. No person shall be eligible to the office of trustee of the university aforesaid, who shall not have attained the age of thirty years.

§ 31. The trustees of the university, for the several judicial circuits, shall be elected by the joint vote of the general assembly, and shall hold their offices for the term of six years, and until their successors are elected and qualified: *Provided, however,* That the trustees, elected at the present general assembly, shall be classified by lots, by the board of trustees, at their first meeting after the passage of this act, into three classes as near equal as may be, one-third of whom shall go out of office biennially.

§ 32. In the event of the death, resignation, or removal from office, of any trustee, the board of trustees shall have power to fill such vacancy, and the appointment so made shall continue until the end of the next general assembly, which shall fill such vacancy by a qualified person, who shall hold his office for the unexpired term of his predecessor.

§ 33. The non-attendance of any trustee elected by the general assembly, for any two consecutive regular meetings of the board of trustees, shall *ipso facto* vacate his office, and the vacancy shall be filled in the manner herein prescribed.

§ 34. The board of trustees, appointed and elected by this act, are constituted a body corporate, with all the powers, duties and privileges of the several acts of the general assembly now in force, for the establishment of the university of the state of Alabama, and their successors in office shall possess and enjoy like powers and privileges, and shall perform their duties in like manner.

§ 35. In all suits or actions brought by or against the trustees of the university of Alabama, in any court of law or equity in this state, it shall not be necessary for their attorney or counselor to produce the seal of the said trustees of the university of Alabama, or a power of attorney under the seal of the said corporation, to authorize him to appear and prosecute any suit or action in behalf of said trustees; and the courts of law and equity, aforesaid, shall, in all cases, recognize their attorney or counselor in the same manner as in suits between individuals.

§ 36. The president of the board of trustees of the university is hereby required to vest in the stock of the state, upon the same terms as the stock has heretofore been invested, what money is now in the treasury, arising from rents, interest, and sale of university lands.

§ 37. The president of the board of trustees of the university is hereby required to vest in the stock of the state, upon the same terms as the stock has heretofore been vested, the amount of capital belonging to the university, which is now in the treasury, or which may be received during the present year.

§ 38. The funds arising by the sale of the lands granted by the United States, for the support of a seminary of learning in this state, which have heretofore been vested as capital stock in the Bank of

*Ib. Sec. 2.*  
Judges of supreme court to be members.

*Ib. Sec. 3.*  
One trustee to each judicial circuit, except the 3d, where there shall be two.

*Ib. Sec. 4.*  
No one eligible under 30 years.

*Ib. Sec. 5.*  
Trustees, how elected and term of office. *Proviso.*

*Ib. Sec. 6.*  
Vacancy, how filled.

*Ib. Sec. 7.*  
Absence for two consecutive meetings to vacate office.

*Ib. Sec. 8.*  
Board of trustees incorporated.

1827—(5)  
*Sec. 1.*  
Attorney of trustees to be accredited without their corporate seal, or a power of attorney.

1827—(32)  
*Sec. 1.*  
Investment of funds in state stock.

1828—(43)  
*Sec. 1.*  
Further investment of funds.

1833—(41)  
*Sec. 1.*  
University funds con-



verted into  
state bank  
stock.

Money arising from  
sales of land,  
except interest, to be-  
come bank  
stock.  
Faith of the  
state pledged  
for safety of  
said funds.

*Ib. Sec. 2.*  
Proviso.

1837—(27)  
*Sec. 1.*  
Trustees au-  
thorized to  
re-organize  
faculty.

1837—(23)  
*Sec. 1.*  
Bank to set  
apart net  
profits of  
university  
fund, for its  
use.

the State of Alabama, shall form a part of the capital of said bank, and the certificates of state stock issued by the governor, and the president and directors of said bank, to the trustees of the university of Alabama, for the moneys thus vested, shall be obligatory on the state, in the same manner as though they had been issued by authority of law; and all moneys, hereafter recovered as aforesaid, with the exception of the interest which may accrue and be collected on outstanding bonds where the land has been sold on a credit, shall, in like manner, be vested as capital in said bank, and the faith and credit of the state are hereby pledged, for the safety of the funds thus vested and provided to be invested, in the same manner as is provided in the first section of an act entitled "An Act to establish the Bank of the State of Alabama," approved December the twentieth, eighteen hundred and twenty-three.

§ 39. The investments hereafter made, of the funds of the university, in state stock, and the investments made by this act, shall, when taken together, never exceed three hundred thousand dollars.

§ 40. The trustees of the university of Alabama shall have full power and authority to re-organize the faculty of said university, and to establish the same upon such plan as to them may seem best calculated to promote the welfare and prosperity of said institution.

§ 41. It shall be the duty of the Bank of the State of Alabama, to set apart the entire net profits made on the funds of the university of this state, for the use and benefit of said university, to be appropriated and used as the six per cent. is now required to be used: *Provided, however,* That, if the said profits shall at any time be less than six per cent., six per cent. shall be paid as now provided for by law.

## UNIVERSITY LANDS.

1820—(14)  
*Sec. 5.*  
Trespass,  
how pun-  
ished:

*Ib. Sec. 8.*  
Prosecutions  
under this  
act.  
Fines appro-  
priated.

1824—(33)  
*Sec. 1.*  
Penalty for  
injuring tim-  
ber on uni-  
versity  
lands.

Trespassers  
allowed to  
give bond for  
damages as-  
sessed.

§ 1. ANY person or persons, who may unlawfully enter upon and destroy any timber or improvements, on any of the lands granted to this state for a seminary of learning, shall, on indictment and conviction, be fined in treble the amount of the damages, to be assessed by a jury, which fine shall be applied to the fund hereinbefore provided for the purposes of the said university.

§ 2. All prosecutions under this act shall be carried on as other prosecutions, in the name of the state of Alabama; and it shall be the duty of the solicitors of the several circuits, upon information, to prosecute such offenders, and to receive the fines imposed by this act, and pay the same into the public treasury.

§ 3. If any person or persons shall unlawfully enter upon, and cut down, carry away or destroy any tree or trees, on any of the lands vested by law in the trustees of the university of the state of Alabama, every such person or persons, being lawfully convicted thereof, before a justice of the peace, shall forfeit and pay to the said trustees, the sum of ten dollars for every tree so cut down, carried away, or destroyed; and, moreover, shall be committed to the jail of the county, in which such offence has been committed, there to remain until he or they shall pay the fine and costs assessed against him or them; unless such person or persons, so convicted, shall execute to the said justice a bond with good security, payable to the



trustees for the amount assessed as aforesaid, within fourteen days thereafter, which bond shall have the effect of a judgment; and should the same not be punctually paid, it shall be the duty of such justice to issue an execution thereon against such obligor or obligors and their securities, or their executors or administrators jointly; and all money, received by such justice in pursuance of the provisions of this act, shall be paid over by said justice, or his successors in office, as the case may be, to the trustees of the university of Alabama.

Proceedings,  
on forfeiture  
of bond.

Justice to  
pay over  
money.

§ 4. If any person or persons shall unlawfully enter upon, and destroy, or remove, any improvements situate on the lands vested as aforesaid in the trustees of the university of Alabama, or unlawfully enter upon and commit any trespass, or trespasses, not provided for by the first section of this act, such person or persons, so unlawfully entering upon, and destroying or removing such improvement, or committing such trespass or trespasses, shall be proceeded against and punished, in the manner described by the fifth section of an act passed the eighteenth day of December, eighteen hundred and twenty, entitled "An Act to establish a State University."<sup>a</sup>

*lb. Sec. 2.*  
Penalty for  
trespassing,  
and destroy-  
ing or remov-  
ing improve-  
ments.

§ 5. The trustees aforesaid shall have power to appoint such number of persons as they may deem expedient, residing near the said lands, for the purpose of protecting the same from trespasses, and to make them a reasonable compensation.

<sup>a</sup> See § 1.  
"Universi-  
ty."  
*lb. Sec. 3.*  
Trustees  
may appoint  
persons to  
prevent tres-  
passes.

NOTE.—Many other provisions, relating to the university lands, will be found interspersed under the preceding title.

## USURY.

§ 1. No person or persons shall, upon any contract whatsoever, take, directly or indirectly, for the loan of any money, wares, merchandise, bonds, notes of hand, or other commodities whatsoever, above the value of eight dollars for the forbearance of one hundred dollars, for one year, and after that rate for a greater or less sum, or for a longer or shorter time; and all bonds, contracts, covenants, conveyances, or assurances, hereafter to be made, for payment or delivery of any money, goods, wares, or merchandise, so to be lent, on which a higher rate of interest is received or taken than is hereby allowed, shall be utterly void and of no effect.<sup>1</sup>

1819—(15)  
Eight per  
cent. lawful  
interest.

Contracts for  
more, void.

§ 2. Every person, who, upon any contract, shall take, accept, or receive, by way or means of any corrupt bargain, loan, exchange, or shift of any money, goods, wares, merchandise, commodities, or bonds, or notes, or other thing whatsoever, above the rate of eight dollars for the forbearance or giving day of payment of one hundred dollars for one year, and so after that rate for a greater or less sum, or for a longer or shorter time, and so after that rate or proportion for goods, wares, merchandise, commodities, bonds, or notes, when such shall be lent, contracted, or agreed for, taken, accepted, or received,

Penalty for  
taking more  
than 8 per  
cent.  
interest.

<sup>1</sup> The first section under this head is repealed by the first section of "An Act to repeal in part an act entitled 'An Act to regulate the rate of interest,'" passed Dec. 17, 1819—which repealing act was approved January 17th, 1834. But, as the following sections refer to the first, and are left in force, to a qualified extent, it was thought better to retain it. See § 9, under this head.



How recovered and appropriated.

Proviso, where borrower is informer. Limitation of action for the penalty.

Judges to charge grand juries to present offenders. Prosecution, how conducted.

Usurious bonds, &c., void.

Obligor competent witness. Bonds given *bona fide* may be sold.

Borrower may be a witness.

<sup>a</sup> See § 7 & 8. Evidence not to be received, if denied on oath.

Perjury under this act.

Persons convicted under this act, disqualified from being bank directors.

Bank directors to take oath against usury.

shall forfeit and lose for every such offence, the whole value or amount, together with all interest thereon; one-half of which forfeiture shall be paid into the public treasury, for the use of the state, and the other half to him or them that will inform and sue for the same, to be recovered with costs by action of debt, in any court of record in this state: *Provided*, That, if the borrower should be the informer as aforesaid, the whole amount, thus recovered, shall be paid into the treasury, for the use of the state: *Provided, also*, That every such action of debt, as aforesaid, shall be commenced and sued in the lender's lifetime, or within three years after the commission of the offence, or in one year after the time of payment of any money, goods, wares, or merchandise, contracted to be paid, on any usurious agreement or contract.

§ 3. It shall be the duty of the judges of the circuit courts, to charge the grand jury of the respective counties within their circuits, to present every person who may violate the provisions of this act, that may come within their knowledge; and, on every such presentment, it shall be the duty of the solicitor for the state, to have issue joined or made upon such presentment, and prosecute the same under the rules and regulations prescribed for the prosecution of *qui tam* actions, and upon conviction, the whole amount thus ascertained to have been lent or taken contrary to the provisions of this act, shall be paid into the treasury for the use of the state.

§ 4. When any note or notes, bond or bonds, shall be upon, or on account of, any usurious contract, the same shall be void and of no effect, and the obligor or obligors forever exonerated from the payment of the same; and the obligor or obligors shall be deemed by this act competent witnesses to prove the usurious consideration of any such bond or bonds, note or notes: *Provided*, That this act shall not be so construed as to prohibit the sale of any bond or bonds which may have been fairly and *bona fide* given, and not given for the purpose of evading the provisions of this act.

§ 5. When any suit or action may be brought, in any court of record in this state, touching or concerning any usurious bond, specialty, promise, or agreement, the borrower or party to such usurious bond, specialty, contract, promise, or agreement, from whom such higher rate of interest is or shall be taken, shall be a good and sufficient witness to give evidence of such offence; *Provided*, That, if any person, against whom such evidence is offered to be given, will deny upon oath, to be administered in open court, the truth of what such witness offers to swear against him, then such evidence shall not be admitted; and if any witness or party shall forswear himself in any such matter, and be thereof lawfully convicted, he or she shall suffer all the pains and penalties by law inflicted on persons convicted of willful and corrupt perjury.

§ 6. Any person or persons, who shall be lawfully convicted of violating this act, shall be forever disqualified from being a director of any bank or banks in this state; and any person or persons, who may be director or directors of any bank or banks within this state, who may be convicted as aforesaid, shall forfeit his or their seat or seats as director or directors; and any person or persons who may be elected or chosen a director or directors of any bank or banks within this state, before entering upon the duties of his office, shall take the following oath, to wit: "I, ———, do solemnly swear, (or affirm,) that I have not, either directly or indirectly, violated the act, entitled 'An Act regulating the rate of interest,' nor will I be guilty



of violating said act, either directly or indirectly, while I continue in the office of director: So help me God."

§ 7. It shall not be lawful for the obligor or obligors, maker or makers of any bond or note, on which suit may hereafter be brought, to establish the fact of usury by his, her, or their own oath, where the obligee or payee of such bond or note has departed this life; but, in such cases, shall be required to establish his, her, or their plea of usury, by other testimony.

§ 8. Where the borrower or borrowers of any sum of money, or other thing alleged to be on usurious consideration, shall have departed this life before the trial of any suit in which the plea of usury may be filed, it shall be lawful for the legal representative or representatives of such borrower or borrowers, to have the benefit of the fourth section of an act entitled "An Act to regulate the rate of interest," passed December 17, 1819,<sup>a</sup> by making affidavit, that he, she, or they believe the contract sued on to be usurious: *Provided*, That this section shall have no force or effect where the lender shall have departed this life; *And provided, further*, That if any person against whom such evidence is offered to be given, will deny upon oath, to be administered in open court, the truth of what such witness offers to swear against him, then such evidence shall not be admitted; and if any witness or party shall forswear himself in any such matter, and be thereof lawfully convicted, he, she, or they shall suffer all the pains and penalties, by law inflicted on persons convicted of willful and corrupt perjury.

§ 9. All contracts whatsoever, which may be made, to take, directly or indirectly, for the loan of any money, wares, merchandise, bonds, notes of hand or other commodities whatsoever, above the value of eight dollars, for the forbearance of one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time, and all bonds, contracts, covenants, conveyances or assurances, hereafter to be made for payment or delivery of any money, goods, wares or merchandise so to be lent, on which a higher rate of interest is received or taken, shall be void and of no effect for the whole interest only: but the principal sum of money, or the value of the wares, merchandise, bonds, notes of hand, or other commodities whatsoever, shall be recoverable upon all the bonds, contracts, covenants, conveyances or assurances aforesaid.

§ 10. The second section of the act against usury, above named, and every other part of said act not contrary to the first section of this act, shall be and remain in full force.

## VAGRANTS.

WHEREAS, it becomes necessary to suppress all wandering, disorderly, and idle persons:

§ 1. *Be it therefore enacted, &c.*, That every person, whether male or female, who has no apparent means of subsistence, shall apply himself to some honest calling for his support; and if any person shall neglect so to do, or shall be found sauntering about, and endeavoring to maintain himself by gambling, or other undue means, it shall be lawful for any justice of the peace of the county wherein such person may be found, on due proof made, to issue his warrant for such offending person, and cause him to be brought before such

1833—(16)  
Sec. 1.  
Usury, how  
to be estab-  
lished after  
the death of  
obligee.

Ib. Sec. 2.  
Representa-  
tives of de-  
ceased per-  
sons allowed  
to plead usu-  
ry on oath.

<sup>a</sup>The prece-  
ding act.  
Proviso.

False swear-  
ing.

1834—(38)  
Sec. 1.  
When usury  
is establish-  
ed, principal  
debt may be  
recovered,  
but no inter-  
est what-  
ever.

Ib. Sec. 2.  
Last prece-  
ding act, ex-  
cept 1st sec.  
still in force.

1801—(1)  
Preamble.

Vagrants,  
how to be  
dealt with.



justice, who is hereby empowered, on conviction, to demand security for his good behavior ; and in case of refusal or neglect, to commit him to the jail of the county for any term not exceeding ten days, at the expiration of which time he shall be set at liberty, if nothing criminal appears against him ; the said offender paying all charges arising from such imprisonment. And if such person shall be guilty of the like offence after the space of twenty days, he or she, so offending, shall be deemed a vagrant, and be subject to one month's imprisonment, with all costs accruing thereon ; which if he or she neglect or refuse to pay, he or she may be continued in prison until the next county court, which may proceed to try the offender, and if found guilty by the verdict of a jury of good and lawful men, the said court may proceed to hire the offender for any term not exceeding six months, to make satisfaction for all costs : but if such person, so offending, be of noted ill fame, so that he or she cannot be hired for the costs, nor give sufficient security for the same, and his or her good behavior, in that case, it shall be lawful for the court, to cause the offender to receive not exceeding thirty-nine lashes on his or her bare back ; after which he or she shall be set at liberty, and the costs thereon accruing shall become a county charge ; which punishment may be inflicted as often as the prisoner may be guilty, allowing twenty days between the punishment and the offence.

Penalty for  
harboring  
idle persons,  
of suspicious  
character.

§ 2. It shall not be lawful for any housekeeper within this state, to harbor or entertain any idle person of a suspicious character knowingly, for any longer time than twenty-four hours, under the penalty of ten dollars for every such offence, to be recovered by warrant before any justice of the peace of the county where the offence shall be committed.

Fines, how  
appropri-  
ated.

§ 3. All fines inflicted by this act shall be paid, the one-half to the informer, and the other half to the use of the county.

## VICE AND IMMORALITY.

1803—(6)  
Sec. 1.  
No work or  
diversion  
allowed on  
Sunday.

Merchants  
and others  
forbidden to  
sell on  
Sunday.

Proceedings  
against  
offenders.

§ 1. No worldly business or employment, ordinary or servile work, (works of necessity or charity excepted,) nor shooting, sporting, hunting, gaming, racing, fiddling, or other music for the sake of merriment, nor any kind of playing, sports, pastimes, or diversions, shall be done, performed or practiced, by any person or persons within this state, on the Christian Sabbath, or first day of the week, commonly called Sunday ; and every person, being of the age of fourteen years or upwards, offending in the premises, shall, for every such offence, forfeit and pay the sum of two dollars ; and no merchant, or shop-keeper, or other person shall keep open store, or dispose of any wares, or merchandise, goods or chattels, on the first day of the week, commonly called Sunday, or sell or barter the same, upon pain of forfeiting the sum of twenty dollars, for every such offence ; and if any person, offending in any of the premises aforesaid, shall be thereof convicted before any justice of the peace, for the county wherein the offence shall have been committed, upon the view of the said justice, or confession of the party offending, or proof of any witness or witnesses upon oath or affirmation, then the said justice before whom such conviction shall be had, shall direct and send his warrant, under his hand and seal, to some constable of the county where the offence shall have been committed, commanding him to



levy the said forfeitures and penalties by distress and sale of goods and chattels of such offender; and in case no such distress can be had, then every such offender shall, by a warrant under the hand and seal of the said justice, be set publicly in the stocks for any space of time not exceeding four hours.

§ 2. No wagoner, carter, drayman, drover, butcher, or any of his slaves or servants, shall ply or travel with his wagon, carts, or drays, or shall load or unload any goods, wares, merchandise, or produce, or drive cattle, sheep, or swine, in any part of this state, on the first day of the week, called Sunday, under the penalty of five dollars, to be levied, recovered and applied, in manner and form as is directed by this act.

*Ib. Sec. 2.*  
No wagoner, &c. to ply on Sunday.

§ 3. No person or persons, upon the first day of the week, called Sunday, shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment, or decree, (except in criminal cases, or for a breach of the peace,) but the service of every such writ, process, order, warrant, judgment, or decree, shall be void to all intents and purposes whatsoever; and the person or persons, so serving or executing the same, shall be liable to the suit of the party aggrieved, and to answer damages to him for the doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment, or decree: *Provided*, That if information shall be made, by the oaths of two reputable persons, to any justice of the peace, or magistrate of any corporate town, that they have good reason to believe that any person, liable to have any such process, warrant, order, judgment, or decree, served upon him, intends to withdraw himself and escape from this state, under cover and protection of the said first day of the week, commonly called Sunday, it shall be lawful for any officer duly authorized, (being furnished with a certificate of such information, upon oath as aforesaid, under the hand of the justice of the peace, or magistrate as aforesaid,) to serve or execute such process, warrant, order, judgment, or decree, on the first day of the week, which shall be as valid and effectually done, to all legal intents and purposes, as if the same had been done on any other day of the week.

*Ib. Sec. 3.*  
Process not to be served on Sunday, except in criminal cases, or for breach of the peace.

Service may be legalized, party making oath, &c.

§ 4. If any person shall profanely swear or curse in the hearing of any justice, or shall be convicted of profanely cursing or swearing, by the oath of one or more witnesses, or confession of the party before any justice, every such offender shall forfeit and pay for every such offence, the sum of fifty cents.

*Ib. Sec. 4.*  
Persons, profanely swearing, or cursing, to be fined fifty cents.

§ 5. Every person, convicted of drunkenness, by view of any justice, confession of the party, or oath of one or more witness or witnesses, shall, for every such offence, forfeit and pay one dollar.

*Ib. Sec. 5.*  
Fine for drunkenness

§ 6. If any person or persons whosoever, shall show forth, exhibit, act, represent, or perform, or cause to be shown forth, acted, represented, or performed, any interludes, farces, or plays of any kind, or any games, tricks, juggling, sleight of hand, or feats of dexterity and agility of body, or any bear-baiting, or bull-baiting, or any such like show, or exhibitions whatsoever, on the first day of the week, every person, so offending, and thereof convicted before any justice of the peace, of the county where the offence shall have been committed, shall, for every such offence, forfeit and pay the sum of fifteen dollars.

*Ib. Sec. 6.*  
All plays, shows, &c. forbidden on Sunday,

under a penalty of fifteen dollars.

§ 7. In case any person, who shall be convicted of any of the offences mentioned in the fourth, fifth and sixth sections of this act, shall not immediately pay the sums so forfeited, with the charges of such conviction, then the said justice, before whom such conviction

*Ib. Sec. 8.*  
Mode of recovering certain fines under this act.



shall be had, shall direct and send his warrant, under his hand and seal, to some constable of the county where the offence shall have been committed, commanding him to levy the said forfeitures or penalties, together with the charges, by distress and sale of the goods and chattels of such offender; and in case no such distress can be had, then every such offender shall, by warrant under the hand and seal of the said justice, be set publicly in the stocks for any space of time, not exceeding four hours.

*Ib. Sec. 9.*  
Proceedings  
against of-  
fenders.

§ 8. Every justice of the peace shall, immediately on information given upon oath or affirmation of any person whosoever, cause the offender or offenders against this act to appear before him, and, upon such information being proved as aforesaid, shall convict such offender or offenders in such a manner as in and by this act is prescribed.

*Ib. Sec. 10.*  
Justice to re-  
ceive fines,  
& pay over.

§ 9. It shall be the duty of the justices, before whom such conviction shall be had, to receive all such forfeitures and fines, as may become due by virtue of this act, and pay one half to the informer, and the other half to the treasurer of the county wherein the offence was committed, for the use of the poor thereof.

*Ib. Sec. 11.*  
Justices to  
enforce this  
act.

§ 10. All justices of the peace, for the county wherein any such offence shall be committed, are required to put this act into execution, against any person or persons within their respective jurisdictions.

*Ib. Sec. 12.*  
Limitation of prosecutions.

§ 11. No person shall be prosecuted for any offence against this act, unless the same be proved or prosecuted within ten days after the commission of such offence.

## WATER-COURSES.

*Act of Congress, March 2, 1819.*

*Sec. 6.*  
All navigable streams, public highways.  
1808—(2)  
*Sec. 3.*  
County courts may contract for the opening of navigable streams.

§ 1. ALL navigable waters within the said state (of Alabama) shall forever remain public highways, free to the citizens of said state, and of the United States, without any tax, duty, impost, or toll therefor, imposed by the said state.

*Ib. Sec. 4.*  
Contractors to enter into bond.

§ 2. The county courts, of the respective counties in this state, are authorized, whenever in their opinion it may be deemed necessary and proper, to open any navigable stream in said county, to contract with one or more persons for opening the same, by giving at least forty days' notice at the court-house of said county, previous to making such contract, which shall, in every case, be let to the lowest bidder for the same.

1810—(2)

*Sec. 1.*  
County courts to have the same jurisdiction of navigable streams, as of public roads.

§ 3. It shall be the duty of said county courts, to take bond and security of the person or persons with whom they may contract for opening any navigable stream, as contemplated by the preceding section, and upon the fulfilment and execution of the said contract, they are hereby authorized to draw on the treasury in favor of the person or persons with whom they have contracted as aforesaid, for any sum not exceeding one-tenth part of the revenue of said county.

§ 4. The clearing and opening of all streams, which have been declared by law to be navigable, or which may, by any county court within this state be declared navigable, shall be placed under the control of the county court of the county through which the same may pass; and the said county courts are hereby vested with power, at their discretion, to appoint overseers to clear out the same, and apportion the hands to work thereon, in the same manner, and



under the same regulations in every respect, that overseers and hands appointed to work on public roads are placed by law.

§ 5. It shall not be lawful for any master of a vessel, or other person, to obstruct, or cause to be obstructed, any of the channels or passes in any of the navigable bays, rivers, or creeks, in this state, by throwing, or putting, or causing to be thrown or put, any ballast, tree, or other impediments, into the said channels or passes, or, in any other manner whatever, to obstruct the free navigation thereof; and the person or persons, so offending, shall be fined in a sum not less than fifty dollars, nor more than two hundred, to be assessed by a jury.

1814—(9)  
Sec. 1.  
Obstruction  
of navigable  
waters pro-  
hibited.

Fine for ob-  
structing.

§ 6. It shall be the duty of any justice of the peace, upon his own knowledge, or upon proper information, to issue his warrant to apprehend any person so offending, and upon his appearance, to bind him in a sufficient recognizance to appear at the next superior court to be holden for the county in which the offence may have been committed, to answer an indictment to be preferred against him. It shall, moreover, be the duty of the grand jury to take notice of offences arising under this act.

*Ib.* Sec. 2.  
Justices to  
apprehend  
and bind  
over offend-  
ers.

Grand juries  
to take cog-  
nizance.

§ 7. All water-courses, reported to be navigable, or which may hereafter be reported to be navigable, by the surveyor of the United States, employed in surveying lands in this state, shall be and remain free and open.

1819—(3)  
Sec. 1.  
Water-  
courses re-  
ported navi-  
gable by U. S.  
surveyor.

§ 8. If any person or persons shall erect any fish-dam on any such water-courses, he or they shall open, in the deepest channel of said water-courses, where any such dam may be erected, one-third of said water-course, including the main channel thereof.

*Ib.* Sec. 2.  
Duty of those  
erecting fish-  
dams.

§ 9. In case any person shall fail to comply with the provisions of the second section of this act, he shall forfeit and pay, for every such offence, the sum of twenty dollars, to be recovered before any justice of the peace; one half thereof to the use of the person who will sue for the same, the other half to the county where such offence shall be committed.

*Ib.* Sec. 3.  
Penalty for  
not comply-  
ing with the  
foregoing  
section.

§ 10. If any person shall make any hedges, or cut, or cause to be cut, any tree or trees to fall in said navigable water-courses, he shall forfeit and pay for every such offence, the sum of ten dollars for every day such hedge or tree shall so remain in said water-course, recoverable before any justice of the peace; one half thereof to the use of the person who will sue for the same, and the other half to the use of the county where such offence shall be committed.

*Ib.* Sec. 4.  
Making  
hedges, or  
felling trees  
in navigable  
streams, &c.  
Penalty.

§ 11. It shall not be lawful for any person, under any pretence whatever, to obstruct or divert any stream of water from its natural channel, which would otherwise flow through the land of any other person.

1820—(15)  
Sec. 1.  
Streams not  
diverted  
from another's  
land.

§ 12. If any person shall violate the provisions of this act, he shall be liable to the action of the party aggrieved thereby.

*Ib.* Sec. 2.  
Offenders  
liable to  
action.

§ 13. The jurisdiction over all rivers, not included in the bounds of any county in this state, is hereby given to the county or counties whose jurisdiction now extends to the margin thereof. And it shall be lawful for the proper officer to execute any process to him directed, on the body or property of the defendant therein named, as well on said river, as in other parts of such county or counties. All process, thus executed, shall be as valid as if executed in the body of the county.

1820—(22)  
Sec. 1.  
Counties to  
have juris-  
diction of  
water-  
courses on  
their mar-  
gins.



## WEIGHTS AND MEASURES.

1828—(13)

Sec. 1.  
Secretary of  
state to pro-  
cure a set of  
weights and  
measures for  
each county.

§ 1. The secretary of state is hereby authorized and required to procure, as soon as may be, at the expense of the state, one set of weights and measures of best materials, for each county in this state, each set to consist of one weight of fifty pounds, one of twenty-five, one of fourteen, one of seven, two of four, two of two, and two of one pound, avoirdupois weight, according to the standard of the United States, with proper scales for weights; together with measures, one of the length of one foot, and one of one yard, cloth measure; and the measures of one half bushel, one peck, and one half peck, dry measure; also, the measures of one gallon, one of half a gallon, one of one quart, one of one pint, one of half a pint, and one of one gill, wine measure, according to the above-mentioned standard, which shall be the standards of weights and measures in this state, till otherwise provided by congress; and the said secretary of state shall cause one set of the said weights and measures to be distributed to each county in this state, and delivered to the clerks of the several county courts, as soon after procuring the same as it can be done with convenience.

To be deliv-  
ered to  
clerks of  
county  
courts.

*Ib. Sec. 2.*  
Clerks to  
give notice  
of the re-  
ceipt of  
weights and  
measures, &  
to try  
weights, &c.,  
presented to  
him.

§ 2. The clerks of the several county courts in this state shall give notice by advertisement, by posting up notices at the courthouse door, and at five or more of the most public places in their respective counties, of the receipt of the said weights and measures provided for their respective counties, whenever the same shall be received; and it shall be the duty of the said clerks of the county courts, to try all weights and measures presented to them, by the standard aforesaid, and, if found to be true and to agree with said standard, the said clerks shall seal them with a seal to be provided by the county court of their respective counties, at their expense, for that purpose; and the said clerks shall be entitled to the sum of twelve and a half cents for each seal applied by them to such weight or measure, for their services, under this act, to be paid by the person having the same performed.

Fees for seal-  
ing.

*Ib. Sec. 3.*  
Penalty for  
selling by  
any other  
than stand-  
ard weights  
& measures.

§ 3. Three months after the receipt by the county court clerks of said weights and measures, and after notice shall have been given as aforesaid, every person, who shall sell any commodity whatever, by weight or measure, that shall not correspond with the said county standard, or shall keep any such for the purpose of buying or selling by, shall, for every such offence, forfeit and pay the sum of ten dollars, recoverable before any justice of the peace, by any person who may sue for the same, and which may be applied to his own use.

## WILLS.

1806—(1)

Sec. 2.  
Who are ca-  
pable of de-  
vising real  
estate.  
Devise, how

§ 1. EVERY person of the age of twenty-one years, of sound mind, lawfully seized of any lands, tenements, or hereditaments, within this state, in his or her own right, in fee simple, or for the life or lives of any other person or persons, shall have power to give, devise, and dispose of the same, by last will and testament in writing:



*Provided*, That such last will and testament be signed by the testator or testatrix, or by some person in his or her presence, and by his or her direction, and attested by three or more respectable witnesses, subscribing their names thereto, in the presence of such devisor; saving, however, to the widows of testators, their dower in lands, tenements, or hereditaments so devised. executed and attested.  
Dower excepted.

§ 2. No nuncupative will shall be established, unless it be made in the time of the last sickness of the deceased, at his or her habitation, or where he or she had resided for the space of ten days or more, next preceding the time of making such will, except such person be taken sick from home, and die before his or her return to such habitation; nor, when the value bequeathed exceeds one hundred dollars, unless it be proved that the testator called on the persons present at the time of making such will, or some of them, to take notice or bear testimony, that such was his or her will, or to that effect. (1) Ib. Sec. 3. Nuncupative wills.

§ 3. No probate of any nuncupative will shall be taken, or letters testamentary granted thereon, till after the expiration of fourteen days from the time of the decease of the testator, nor till citation hath issued to call in the widow and other person or persons principally concerned, if resident in this state, that they may appear and contest such will if they see cause. Ib. Sec. 4. Probate, &c. of nuncupative wills, how regulated.

§ 4. After the expiration of six months from the time of speaking any pretended testamentary words, no testimony shall be received to prove the same to be a nuncupative will, unless such words, or the substance thereof, were reduced to writing within six days after speaking the same. Ib. Sec. 5. Nuncupative wills must be proved in six months, unless, &c.

§ 5. No will in writing, or bequest therein of goods and chattels, shall be revoked by any subsequent will, codicil, or declaration, unless the same be in writing: *Provided, always*, That any soldier in actual military service, or mariner or seaman being at sea, may dispose of and bequeath his goods and chattels, as he could have done before the passing of this act, anything herein contained to the contrary notwithstanding. Ib. Sec. 6. Written will not revoked by nuncupative will, except in case of soldiers, seamen, &c.

§ 6. When any child shall be born after the death of the father, without having any provision made in his will, every such posthumous child shall have the same share of the estate of his or her father, that such child would have had, if the father had died intestate, and such share shall be assigned to him or her accordingly, to be taken in proportion from the legatees and devisees of such will. Ib. Sec. 7. Posthumous children provided for.

§ 7. All such estate, both real and personal, as is not devised or bequeathed in the last will and testament of any person, shall be distributed in the same manner as the estate of an intestate, and the executor or executors shall administer the same accordingly. Ib. Sec. 8. Estate not bequeathed, how disposed of.

§ 8. If any person shall be a subscribing witness to a will, wherein any devise or bequest is made to such subscribing witness, and the will cannot be otherwise proved, the devise or bequest to such witness shall be void, and he or she compellable to appear and give testimony on the residue of the will, in like manner as if no such devise or bequest had been made. But if such witness would have Ib. Sec. 9. Attesting legatees to forfeit their bequests in certain cases.

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(1) To constitute a nuncupative will, the words spoken must have legal certainty, and be intended as a will:—and they must be spoken *in extremis*. Sykes *et al.* v. Sykes *et al.* 2 *Stewt. Rep.* 364.



been entitled to any share of the testator's estate, in case the will was not established, then so much of such share shall be saved to such witness as shall not exceed the value of the said devise and bequest made to him or her in the said will.

*Ib. Sec. 10.*  
Attesting  
creditor com-  
petent wit-  
ness.

§ 9. If lands, tenements, or hereditaments shall be charged with any debt or debts by any will or codicil, and the creditor, whose debt is so secured, shall attest the execution of such will or codicil, such creditor may, notwithstanding, be admitted as a witness of the execution thereof.

*Ib. Sec. 12.*  
Wills, where  
to be proved.

§ 10. If any testator shall have a mansion-house, or known place of residence, his will shall be proved in the orphans' court of the county wherein such mansion-house or place of residence may be; but if he has no place of residence, and lands be devised in the will, it shall be proved in the county wherein the lands so devised are situate, or in one of them, where there shall be lands so devised in several counties; and if he has no such known place of residence, and there be no lands devised, then the will may be proved either in the orphans' court of the county where the testator shall die, or that wherein his estate, or the greater part thereof shall be.

*Ib. Sec. 13.*  
Testimony of  
subscribing  
witnesses  
out of the  
state.

§ 11. When the subscribing witnesses to any will shall reside out of this state, the court, to which the probate of the said will may appertain, is authorized to issue a *dedimus potestatem* to take the testimony of such witnesses in proof of said will, and receive the testimony so taken accordingly.

*Ib. Sec. 14.*  
Foreign  
wills, how to  
be proved.

§ 12. Authenticated copies of wills, proved according to the laws of any of the United States, or of any country out of the limits of the United States, and touching or concerning estates within this state, may be offered for and admitted to probate in the said courts; but such will shall be liable to be contested and controverted, in the same manner as the original might have been.

*Ib. Sec. 15.*  
Secreted  
wills to be  
produced.

Wills, after  
probate, how  
preserved.

§ 13. If the court, having jurisdiction as aforesaid, shall be informed that any person hath the last will and testament of a testator, such court is authorized to compel such person, by proper process, to produce the same; and all original wills, after probate thereof, shall be recorded, and remain in the register's office of the court wherein they are respectively proved, except during such time as they may be in the supreme court, having been removed thither for inspection, by *certiorari* or otherwise, after which they shall be returned into the said office.

*Ib. Sec. 54.*  
Executors  
may sell by  
direction of a  
will.

§ 14. The sale and conveyance of lands, tenements, and hereditaments, directed or devised to be sold by any last will and testament, shall be made by the executors, or such of them as undertake the execution of the will, if no other person be therein appointed for that purpose, or if the person so appointed shall refuse to perform the trust, or die, before he shall have completed it.

*Ib. Sec. 55.*  
Wills may be  
disputed by  
bill in chan-  
cery within  
five years,

and not af-  
terwards.

§ 15. Within five years from the time of the first probate of any will, any person interested in such will may, by bill in chancery, contest the validity of the same; and the court of chancery may, thereupon, direct an issue or issues in fact to be tried by a jury, as in other cases, and in all such trials, the certificate of the oath of the witnesses, at the time of taking the original probate, shall be admitted as evidence to the jury, to have such weight as they may think it deserves; but, after the expiration of the said five years, the original probate of any will shall be conclusive and binding on all parties concerned; saving however to infants, *femes covert*, persons *non compos mentis*, or absent from the state, the like period



of five years from and after the removal of their respective disabilities.

§ 16. Whenever any last will and testament shall have been, for the space of one year, proved and recorded in any county of this state, in the manner the law directs, and such last will and testament shall be required to be proved in any other of the United States, to enable the executors, or administrators with the will annexed, to comply with its provisions, or some part of the provisions thereof; it shall be the duty of the judge of the county court in which such will and testament shall be, to allow the executor or executors, or administrators, to withdraw the will for the purposes aforesaid.

1830—(8)  
Sec. 1.  
Will may be withdrawn for probate in another state.

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WITNESSES.

§ 1. For taking the testimony of witnesses in all causes, which may be depending in any of the courts of this state, the following rules shall be observed and put in practice, to wit: In all suits where witnesses are to appear at any of the said courts, the clerk, at the request of the party, shall issue a subpoena, directed to the sheriff or other officer of the county where such witness or witnesses are said to reside, mentioning the time and place for his, her, or their appearance, the names of the parties to the suit wherein the testimony is to be given, and the party at whose instance such witness or witnesses is or are summoned.

1807—(32)
Sec. 1.
Mode of summoning witnesses.

Every subpoena, made returnable immediately, shall be issued only in term time, and shall be personally served on the witness or witnesses therein named.

Subpoenas returnable immediately.

A copy of every subpoena issued by the clerk in vacation, in case the witness or witnesses therein named is or are not to be found, may be left at their usual places of residence, and such copy, certified by the sheriff or other officer, left as aforesaid, shall be deemed a legal summons, and the person or persons, therein named, shall be bound to appear in the same manner as if personally summoned.

Where copy of subpoena may be left.

§ 2. If any person, duly summoned as a witness, shall fail to appear and attend as herein required, he shall pay to the party, at whose instance the subpoena issued, the sum of one hundred dollars, to be recovered by *scire facias*, with costs, and shall be further liable to the action of such party, for the full damages which may be sustained, for want of such witness' testimony: *Provided*, That, if sufficient cause be shown by the person so summoned and failing to appear, of his or her incapacity to attend at the time and place mentioned in the subpoena, no forfeiture or penalty shall be incurred by such failure.

Ib. Sec. 3.
Penalty for not attending in civil cases

Proviso.

§ 3. Every witness, being summoned to appear in any of the said courts on a criminal prosecution, or plea of the state, shall appear accordingly, and continue to attend from day to day, until discharged by the court, the attorney for the state, or the party at whose instance he shall be summoned; and, in default thereof, shall forfeit and pay the sum of one hundred dollars for the use of the state, or the party summoning him, (as the case may be,) unless on or before the return of a *scire facias*, "made known," sufficient cause be shown for such failure.

Ib. Sec. 4.
Penalty for not attending in criminal cases.

Ib. Sec. 5.
Persons refusing to give testimony, to be imprisoned.

§ 4. If any person, who shall be summoned as a witness in any of the said courts, or before any person appointed to take depositions, shall refuse to give testimony on oath, such person; so refusing, shall, by the court or by the commissioners, before whom he or she shall be summoned, be committed to the common prison, there to remain without bail or mainprize until he or she shall be willing to give testimony, in such manner as the law may direct.

Ib. Sec. 6.
Witnesses exempt from service of process while attending.

§ 5. During the attendance of any person summoned to attend as a witness in any court whatsoever, and during the time that such person is going to and returning from the place of such attendance, (allowing one day for every twenty-five miles such witness has to travel from and return to his place of residence,) no sheriff, or other officer shall serve or execute on any person, so attending, going to, or returning from, such court, any writ or process, warrant, order, judgment, or decree, in any cause, (summons for witness excepted,) and, if any such be executed, the service thereof shall be null and void.

Ib. Sec. 7.
Attendance, how proved.

§ 6. In any bill of costs, there shall not be allowed the charges of attendance of more than two witnesses to any one matter of fact. And the attendance of the witness, as to the number of days, shall be ascertained by the oath of the witness, to be made at the court at which the cause is determined, or within five days after, before the clerk of the said court, who shall grant certificates of the same, after the termination of the suit: (1) *Provided, also,* That if any witness shall swear falsely, in order to obtain a ticket, he shall, upon conviction, be adjudged guilty of perjury, and suffer, as in cases of corrupt and willful perjury.

Swearing falsely.

Ib. Sec. 8.
Compensation of witnesses in state cases.

§ 7. All witnesses, appearing in behalf of the state, in any criminal prosecution, shall be allowed the same compensation for their daily attendance, as is allowed to witnesses attending upon civil prosecutions; and such fees for attendance, together with all costs of the prosecution, shall be paid by the defendant, upon conviction; and if the state shall fail, upon the prosecution of any offence of an inferior nature, the court may, at their discretion, order the costs to be paid by the prosecutor, in case such prosecution shall appear to have been frivolous or malicious; and in case the defendant shall not be able to pay costs, or the court shall not think fit to order the prosecutor to pay the same, in that case, the clerk of the court, wherein the matter may have been pending, shall grant a certificate of attendance for the witness of the state, in manner as tickets are granted to jurors, "and such tickets may be received by the sheriffs in payment of public dues, and it shall be the duty of the county treasurer in each county, to pay off and discharge all certificates, granted to state witnesses, according to the provisions of this section, out of any fines and forfeitures which may come into said county treasury."

In what cases certificate to be granted to witness.

[a 1823—(31)
Sec. 1.
County treasurer to pay certificates out of the fines, &c. in county treasury.

Ib. Sec. 9.
Negroes, Indians, &c. incompetent.

§ 8. All negroes, mulattoes, Indians, and all persons of mixed blood, descended from negro or Indian ancestors, to the third generation inclusive, though one ancestor of each generation may have

(1) A witness, at the instance of one who is a party in several suits, is entitled to compensation in each case in which he is summoned. He may transfer his certificate by delivery, and the holder can maintain an action in the name of the witness for his own use. *Findley & Cummins v. Wiser, use, &c., 1 Stew. Rep. 23.*

been a white person, whether bond or free, shall be taken and deemed to be incapable in law to be witnesses in any case whatsoever, except for and against each other.

§ 9. The liberty of giving testimony by way of solemn affirmation, shall be admitted in all cases whatsoever, criminal as well as civil. *Ib. Sec. 10. Witnesses may affirm.*

§ 10. Every person, who may be summoned to attend before any justice of the peace, to give evidence in any matter of controversy, pending before such justice, and shall attend accordingly, shall receive fifty cents per day for such attendance, to be taxed in the bill of costs, and recovered from the party cast in the suit. *1826—(40) Sec. 1. Witnesses before justices allowed 50 cts per day*

§ 11. Every witness, who may be summoned to attend any circuit or county court, shall be entitled to receive the sum of one dollar and fifty cents per day, for each and every day he may attend to give evidence; five cents per mile for every mile he shall travel in going to or returning from court, the distance to be computed from the usual place of his residence to the place of holding the court he shall attend, according to the most usual route of traveling, and all necessary ferriages to be paid by the party at whose instance he shall have been subpoenaed. *1837—(39) Sec. 1. Before court to receive \$1.50 per day 5 cts per mile & ferriages.*

§ 12. It shall be the duty of the clerk of the court, which any witness duly summoned shall have attended to give evidence, (at any time after the cause, in which said witness shall have been subpoenaed, shall be tried, or continued, or such witness discharged by the party at whose instance he was subpoenaed, his agent or attorney, provided, it be not more than five days after the adjournment of the court, in which any cause may be finally tried,) upon the application of such witness, and upon oath as now provided for by law, to grant him a certificate of his attendance, stating therein the amount to which he may be entitled for attendance, traveling and ferriages, and all necessary expenses, paid at toll-bridges or turnpike gates; and the clerk of any court, upon granting such certificate, shall also make a memorandum of the amount to which such witness shall be entitled, in his subpoena docket, or in a separate book, to be kept for that purpose, and, upon the final disposition of the suit in which any witness shall have so proved his attendance, to tax the entire amount thereof in the bill of costs, to be collected of the unsuccessful party, subject, nevertheless, to be discharged by the production of the certificate of the clerk, granted to any such witness, with his receipt for the amount written thereon. *Ib. Sec. 2. Clerk to grant certificate of attendance, &c if applied for not more than 5 days after adjournment of court.*

§ 13. When any witness, whose evidence may be wanted in any cause depending in either the circuit or county court of any county of this state, shall reside more than one hundred miles from the place of holding the court in which his evidence may be wanted, such witness shall not be compelled to appear and give evidence in person, unless the party desiring the benefit of his evidence, or the agent or attorney of such party, shall make oath before the clerk of the proper court, that he believes the personal attendance of such witness is necessary, in order to enable him to obtain justice, which oath the clerk shall certify on the back of the subpoena to be issued for such witness. *Ib. Sec. 3. Witness, residing more than 100 miles off, not bound to attend court, unless party summoning will make affidavit, &c.*

§ 14. When any witness, whose evidence may be wanted in any cause depending in any circuit or county court of this state, shall reside more than one hundred miles from the place where the court may be held, in which such cause may be depending, the party, desiring the benefit of the evidence of such witness, shall be permitted and is *Ib. Sec. 4. Such witness' deposition may be taken.*

hereby authorized, to take the same by deposition, either in the manner now provided by law for taking the evidence of non-resident witnesses, stating always in the affidavit to be made, that he believes the witness, whose evidence he wants to take, lives more than one hundred miles from the place where the evidence of such witness may be wanted to be used.

Ib. Sec. 5.
Witnesses
liable to at-
tend court, to
be summon-
ed to each
term.
Clerk to issue
subpœnas ac-
cordingly.

§ 15. Every witness, whose evidence may be wanted, by either party, in any cause depending in any circuit or county court of this state, who may be liable to attend in person, shall be subpœnaed to attend each and every term of the court in which his evidence may be wanted; and it shall be the duty of the clerks of said courts, where a witness has been ordered to be subpœnaed by any party, to continue thereafter to issue subpœnas for such witness, from term to term, until the cause, in which the evidence of such witness may be wanted, shall be finally tried, or the said witness discharged by the proper party, and the clerk notified thereof: *Provided*, That no clerk shall be required to send any subpœna to any county other than his own, unless the party, at whose instance such subpœna shall be issued, shall first pay him a sum sufficient to defray the postage on the transmission by mail, of such subpœna, to the sheriff of the county where the same may be required to be served: *Provided*, That nothing, contained in this section, shall apply to the county of Marengo: but that, in said county, the law now in force, requiring witnesses continually to attend, from term to term, after having been once subpœnaed, until the suit in which their evidence may be wanted shall be tried, or the witnesses discharged as now provided, shall continue in full force and operation, notwithstanding any thing in this act contained.

Proviso.

Ib. Sec. 6.
Witness
may demand
his pay of
party sum-
moning, at
close of each
term.

§ 16. Each and every witness duly summoned, who may attend any circuit or county court, to give evidence, shall, at the end of any term of the court, which such witness may have attended, upon the production of the certificate of the clerk thereof be entitled to demand and receive from the party, at whose instance he was summoned, the amount which he shall be entitled to receive for his attendance, according to the said certificate; and if, upon such demand, the said party shall neglect or refuse to pay the witness the amount to which he shall be so entitled, every such witness shall have a right to sue for and recover the amount which he shall be entitled to receive according to said certificate, with lawful interest thereon, from the time of said demand, before any justice of the peace, or any court having jurisdiction thereof, and the said certificate of the clerk shall be deemed sufficient evidence for the plaintiff on the trial of any such suit.

Ib. Sec. 7.
May demand
pay of party,
asking him
to attend, at
same rate.

§ 17. When any person shall attend any court in this state, or before any justice of the peace, to give evidence at the request of any party, without being subpœnaed for that purpose, he shall be entitled to demand, receive and recover, from the party at whose instance and request he shall have attended, the same compensation to which witnesses duly summoned shall be entitled, but the same shall not be taxed in the bill of costs or recovered of the opposite party in any suit.

Ib. Sec. 8.
In state cases
to receive
same pay as
in civil cases.

§ 18. Witnesses in state cases, depending in any of the circuit courts of this state, whether summoned on the part of the state or of the defendant, shall receive the same compensation, as is provided by the first section of this act for witnesses in civil cases, to be paid as now provided by law.

§ 19. The same fees allowed by this act to witnesses^a per day, and mileage, shall be allowed and paid to jurors, attending the circuit and county courts of the county of Madison.

§ 20. Any person, who shall be summoned as a witness on a criminal prosecution, in any of the courts, shall appear accordingly, and continue to attend from term to term, until discharged by the court, the attorney for the state, or the party, at whose instance he shall be summoned; and, in default of his attendance, shall be subject to the same penalty as is now prescribed by law, in like cases of default.

§ 21. The clerk shall not issue subpoenas for the same witnesses from term to term, during the proceedings of such cases.

Id. Sec. 9.
Jurors in Madison allowed same fees and mileage.
^a *Sec. § 11 ante.*
1842—(3)
Sec. 1.
Witness in criminal cases, to attend until discharged.
Penalty.
Id. Sec. 2.
Clerk not to re-issue subpoenas.

APPENDIX.

NO. I.

RULES OF COURT AND PRACTICE,

ADOPTED BY

THE SUPREME COURT OF ALABAMA.

GENERAL RULES.

1. The clerk of every court of record in the state, shall keep in ^{Appearances} court, in term time, and in his office in vacation, a book to be called "The Book of Appearances." Any attorney or solicitor, desiring to appear in any civil cause, shall make in said book, or cause to be made therein by the clerk, an entry of his name, stating the cause in which he appears, (and if there be several of the same name, its number or other mark of identity,) the party or person for whom he appears, and the date of such entry. Such entry shall be considered an appearance of record. The counsel, whose name shall be so first entered, shall be considered the leading counsel in the cause, for the party or person for whom he so appears, until he abandon the cause, and then the counsel whose appearance shall be next in date, and so on. Such notices, &c. as are authorized to be served on the attorney of a party shall be served on his leading counsel.*

2. No one shall be permitted to appear in a cause as counsel or ^{Appearances} attorney, unless he has been employed therein, and his appearance has been entered as aforesaid, or unless he represent other counsel, whose appearance has been so entered, or may have the special leave of the court.*

3. Counsel shall be considered as having abandoned a cause by ^{Abandonment.} entry to that effect, by failing at two successive terms of the court, to appear or be represented therein, by removal from the state, by quitting the practice, or by death; in any of which, and in such other cases as the court may direct, the clerk may enter such abandonment on the book of appearances.*

4. The attorney's fee, taxed in the bill of costs, shall be taxed in ^{Fees.} the name of the leading counsel, at the time of final trial.*

5. All declarations, pleas, bills, answers, assignments of errors, ^{Assigning errors.} joinders in error, briefs, &c., must be signed by counsel where counsel is employed.*

Attorneys
may take pa-
pers from
clerks' and
registers'
offices.

6. It shall be the duty of the several clerks and registers of courts in vacation, to permit the attorney or solicitor of record, for either party, in any suit pending in their courts, to take from the office, the papers in any cause, and retain them for the space of twenty-four hours at any one time, executing a receipt therefor. The papers not to be carried beyond the limits of the town in which the office of the register or clerk is located; and the clerk or register shall at all times have access to them.*

RULES OF PRACTICE IN THE SUPREME COURT.

Assigning
errors.

1. In assigning errors, it shall be sufficient to state concisely, in writing, in what the error consists. The words "there is no error in the record," shall be a sufficient joinder in error.

Assigning er-
rors.

2. On application to the court, additional assignments may be filed at any time before joinder, but after joinder, such only as will affect the merits of the controversy.

Trial of
causes.

3. Each cause, (not being within the rule concerning delay cases, nor the rule concerning criminal cases,) must be called and tried according to its order on the docket, unless for good cause shown, it be continued or passed over.

Authorities.

4. A list of the authorities to be used in the argument of any cause, shall, if applied for, be furnished to the counsel for the adverse party, one day before the trial; otherwise, they shall not be read or commented on in the argument, on behalf of the party so in default, but they may be cited.

Authority.

5. No authority, which was not read in the opening argument, shall be read in the conclusion, unless by leave of the court, or to rebut authority introduced by the adverse counsel.

Roll of attor-
neys.

6. The clerk shall keep a list or roll of all attorneys of this court, entering their names in the order in which they were admitted.

Special mo-
tions.

7. Special motions shall be heard on each Thursday of the term; and for this purpose the clerk shall call over the names of the attorneys, beginning with the attorney-general, and proceeding with the others according to their order on the roll.

Motions.

8. The clerk shall keep a motion docket, in which shall be entered all motions for argument, which are not *ex parte*, or of course. In such entry, the nature and particular grounds of the motion shall be designated, and, at least one day before the hearing of the motion, the entry shall be shown to the counsel for the adverse party, or he shall have such written notice as will enable him to refer to it.

Criminal
causes.

9. On the second Thursday of each term, after the motions have been heard, the criminal causes shall be called, and shall be in order until all are disposed of; but the court, for sufficient reason shown, may postpone any such cause until another day. In such causes, the party seeking to reverse, shall assign errors and furnish briefs.

Delay cases.

10. On any motion day, if the counsel for the defendant in error, or appellee, state that it is his belief that the case is brought into this court merely for delay, the record shall be submitted to the court without argument on either side. If the court, on examining

the record, consider it a delay case, the judgment shall be affirmed ; but if it appear to be doubtful or difficult, or if, when so offered to be submitted, or at any time during the term, the counsel for the plaintiff in error, or appellant, state to the court that it is his opinion, that, on more full examination, the judgment will be reversed or corrected, it shall not be so affirmed ; or, if such judgment of affirmance has been entered, it shall be set aside, and the case shall stand over for argument in its regular order.

11. In cases where the judges are equally divided in their opinions, the judgment of the court below shall be affirmed ; but, if the judges, whose opinions shall be against affirming, so request, the case shall be retained for one term only. Division of court.

12. A *certiorari* to perfect or to bring up a complete record, may be awarded at the first term, on motion of either party : if its object be to sustain a judgment, without a showing ; but if to reverse a judgment, a sufficient showing must be made. Certiorari.

13. The clerk may permit either of the attorneys concerned in a cause to take the record and papers thereof from the clerk's office, to be returned at such time as by the rules of the office may be directed. Records.

14. The public examination for licenses to practice law, shall be on the first Tuesday and on each Saturday of the term. Students.

15. No private agreement or consent between the parties, or their attorneys, relating to the proceedings in any cause, shall be alleged or suggested by either against the other, unless the same be in writing, and signed by the party to be bound thereby. Private agreements.

16. The counsel for the plaintiff in error or appellant, one day at least before the trial, shall furnish to the court three briefs, succinctly stating therein the material facts, out of which the points in controversy arise, and referring to the authorities on which he relies ; and shall not be heard in argument unless such briefs be furnished. Briefs.

17. After the first day of January next, all transcripts of records sent up to this court, shall be on paper of uniform size, (according to a sample to be furnished by the clerk of this court,) with a blank margin of an inch and a half, along the side of each page where the leaves unite. Transcripts, size.

18. No original bill of exceptions or paper, read or offered in evidence shall be sent to this court. Copies of bills of exceptions, and of papers therein referred to, shall be inserted in their proper places in the transcripts. Copies of papers.

19. The pages of the transcripts shall be numbered. Each transcript shall be prefaced by an index to its contents, specifying the pages at which the various matters, (as the writ, declaration, pleas, bill of exceptions, judgment, bill in chancery, answer of each defendant, deposition of each witness, each interlocutory order or decree, final decree, &c. &c.) are to be found. Marginal references to the several matters, as above, shall be made throughout the transcript. Index of.

20. The several sheets of each transcript shall be so stitched together, that every part can conveniently be read. The clerk's seal shall be so placed across the fastening of the cord with which the sheets are stitched, that no part of the transcript can be detached, without separating the seal, cord, or paper. No paper attached by wafer, paste, nor in any other manner than as above, shall be considered as part of the transcript. Clerk's seal in.

21. A copy of the bond for prosecuting the writ of error, or appeal, (when such bond is given,) shall be sent with the transcript ; such copy, the writ of error, citation, &c., may be sent detached from the Copy of bond citation.

transcript. When the citation shall not be sent, the clerk shall certify whether a citation issued or not.

22. The clerk of this court shall transmit, by mail or otherwise, to the clerks of the several circuit and county courts, a copy of this rule, and a sample as required thereby—and no transcript shall be here filed, unless it conform to the first, second, and third clauses of this rule, as above stated.

Transcript. 23. As the practice of this court, in relation to the filing of transcripts, and the setting aside of judgments rendered on certificates and citations, seems to be but imperfectly understood, the court will state, for the information of the bar, the rules, which will hereafter be rigidly adhered to:*

Transcript. 24.—1st. If the transcript of the record is not delivered to the clerk, and errors assigned within the first three days of the term, the defendant in error is entitled, at any time before the record is filed, and the errors assigned, to his judgment of affirmance, on production of the proper certificate or citation.*

Transcript. 25.—2d. Whenever a judgment shall be taken before a call of the division, to which the case properly belongs, it will be deemed a sufficient cause to reinstate the case, and to set aside the judgment, if the transcript is filed at any time before the first motion day, after the call of the division.*

Transcript. 26.—3d. In all other cases where a motion is submitted to set aside a judgment rendered on certificate or citation, affidavits must be produced, shewing satisfactory reasons why the transcript was not filed within the first three days after the call of the division to which the case belongs. If the transcript offered, is defective, the affidavits must show, either that application has been made for a correct transcript, or that there was not sufficient time, after the defect was discovered, to procure one before the adjournment of the court. And, in either event, the deficient matter must be stated with sufficient certainty, to enable the defendant in error to admit the existence of the same, and to proceed as if the record was complete.*

Advisement. 27. In all cases which shall be held under advisement, it shall be the duty of the clerk to furnish two copies of the record, or such parts thereof as may be required by the court, and that the costs of the same be taxed in the bill of costs.*

Where no proceedings at return. 28. In all cases where writs of error, or appeals, shall have been allowed, returnable to this court, if at the proper return term, no proceedings are had in the cause; and the same be neither affirmed, reversed, dismissed nor continued, the defendant in error, or appellee, shall be entitled to proceed to execution in the court below, as if no writ of error or appeal had been allowed, upon filing with the clerk below, the certificate of the clerk of this court, that no proceedings have been had in such cause at the return term. And the clerk of this court shall issue such certificate on the application of any party requiring the same, certifying that no proceedings have been had in such cause as the applicant shall name, when such is the fact: *Provided*, That where such certificate shall have been applied for and issued from this court, no affirmance on certificate from the court below at any after term shall be allowed, unless the certificate of no

* Adopted January Term, 1838.—It is ordered by this court, that the rules of court collected and published in the fifth volume of Stewart & Porter's Reports, and as there respectively numbered and arranged, be, and the same are hereby adopted as rules of practice in the supreme, circuit and county courts of the state of Alabama.

proceedings obtained from this court, be returned with an affidavit that the same has not been used, or other satisfactory evidence thereof.*

29. This court has hitherto been very indulgent in admitting to Students. its bar applicants for license. That none may hereafter present himself for examination who is not well skilled in his profession, the court deems it proper to declare, that, in future, examinations conducted under its eye, will be thorough, and well calculated to test the extent of the applicant's professional attainments; and where these are defective, the court will not hesitate to withhold a license.†

RULES OF PRACTICE IN CIRCUIT AND COUNTY COURTS.

‡ 1. The clerk shall enter all causes on the appearance docket, according to the order in which the writs were received by the sheriff. ^{Appearances.}

2. He shall keep a separate docket in which shall be entered all motions made during the term, (not incidental to the cause,) in the order of time in which they are made, and they shall be called in the same order. ^{Docket.}

3. He shall keep on his table when the court is sitting, and at all other times in his office, a memorandum book, in which the attorneys may respectively enter *precipes* and other directions to him. ^{Order book.}

4. On every final judgment and decree rendered during the term, (unless the party to be benefited thereby, or his attorney, shall, in writing, otherwise direct,) the clerk shall issue execution, as soon after the adjournment as the law will permit. ^{Executions.}

5. An attorney may be security for costs, but shall not be bail for his client, either in a civil or a criminal case. ^{Attorneys.}

6. To every *scire facias* returned "made known," the defendant shall plead within the first two days of the term to which the same is returned, the plaintiff shall reply on the day next thereafter, and so on from day to day, until issue in fact or in law be joined; but either party may demand a trial at the return term, although the court may not continue in session three days. ^{Scire facias.}

7. When oyer of any instrument which is the foundation of the action, is demanded, and notice thereof given to the attorney for the plaintiff, oyer shall be granted within two days thereafter; unless the instrument be out of the possession of the plaintiff, and a *subpœna duces tecum* be necessary, in which case oyer shall be granted on the return of the *subpœna*, duly executed; and in default thereof, in either case, judgment of *non pros* shall be entered. When oyer of letters testamentary or letters of administration, is demanded, it shall be granted on or before the first day of the term next after the return of the writ, but the trial shall not, on that account, be delayed. ^{Oyer.}

* Adopted January Term, 1839.

† Adopted June Term, 1839.

‡ The rules from 1 to 23 inclusive were adopted by the supreme court at January Term, 1838.

- Production of papers. 8. When the action is on any instrument purporting to have been signed by the defendant, and, within the time prescribed for pleading, he shall give notice to produce it, it shall, within one day thereafter, be produced for his inspection. In default thereof, non-suit may be entered, unless sufficient excuse be shown.
- Defaults. 9. Defaults may be entered on the docket in vacation, which shall relate to the preceding term, and advantage thereof may be claimed at the next term.
- Defaults. 10. After a default has been duly entered, the party claiming the benefit thereof shall not be bound to receive any plea or pleading of the party so in default.
- Defaults. 11. On timely application, on affidavit showing merits and sufficient matter of excuse, a default may be set aside on such terms as the court may impose.
- Plea in abatement. 12. No plea in abatement shall be received if objected to, unless by the indorsement of the clerk it appear to have been filed within the time allowed for pleading.
- Attachment. 13. A motion to quash an attachment, appeal or process must be made at the first term at which it can be made, and not afterwards.
- Private agreement. 14. No private agreement or consent between the parties or their attorneys, relating to the proceedings in any cause, shall be alleged or suggested by either against the other, unless the same be in writing and signed by the party to be bound thereby.
- Trial of causes. 15. The docket of civil causes for trial shall be called absolutely on the first day of the term, unless the presiding judge shall order otherwise. Each cause shall be taken up according to its priority on the docket, and tried or continued. If passed over, it shall not be called again during the term until the other causes for trial have been disposed of.
- Continuance. 16. The party applying for a continuance of any civil action, must state in the affidavit the names and places of residence of the absent witness or witnesses; what diligence he has used to obtain his or their testimony, and what he expects to prove thereby. If the adverse party will admit what, it is so alleged, such absent witness will swear, the cause shall not be continued by reason of the absence of such testimony. After the first continuance, such other showing must be made, and such terms may be imposed, as to the court shall seem proper.
- Continuance. 17. No cause shall be continued twice in succession by consent of parties.
- Examination of witnesses. 18. On trial, only one counsel on each side shall examine a witness.
- Argument. 19. If the counsel for the plaintiff waives the right of opening the argument, he shall not have the right of concluding.
- Change of venue. 20. Whenever a change of venue shall be awarded, the clerk shall subjoin to the original papers, a transcript of all entries relating to the suit; and by some discreet person send the whole inclosed under seal, to the clerk of the court to which the case is ordered to be removed. Such messenger, on producing the receipt of the clerk to whom the papers, &c., have been so sent, shall be entitled to receive from the clerk by whom he was employed, five cents per mile for going and for returning from the one clerk's office to the other. The clerk shall not be bound to transfer said papers, &c., until the party obtaining the change of venue has deposited with him a sum sufficient to pay the compensation of the messenger aforesaid.

21. A particular day in each term shall be set apart for hearing motions, but they may be heard at an earlier day by leave of the court.

22. Reasons in arrest of judgment, and reason for new trial, and the affidavits in support thereof, if any are relied on, shall be filed with the clerk, and notice thereof be given to the adverse party, one day before the argument. If the cause is tried on the last day of the term, the notice shall be given when the motion is entered. The party making such motion is entitled to the opening and conclusion of the argument. All such motions not acted on, or continued by order of the court, are to be considered as discharged of course, on the last day of the term.

23. In cases brought from a county court into a circuit court, by writ of error or appeal, the rules of the supreme court so far as applicable, shall be in force in the circuit court.

24. In every action of ejectment, the defendant shall specify in the consent rule, for what premises he intends to defend, and shall consent in such rule, to confess upon the trial, that the defendant, (if he defends as tenant, or in case he defends as landlord, that his tenant,) was, at the time of the service of the declaration, in possession of such premises, and that if, upon the trial, the defendant shall not confess such possession, as well as lease, entry and ouster, whereby the plaintiff shall not be able further to prosecute his suit against the said defendant, then no costs shall be allowed for not further prosecuting the same, but the said defendant shall pay costs to the plaintiff, in that case to be taxed.

25. Where several actions of ejectment have been commenced for the same premises on the demises of different lessors, it may be lawful for the plaintiff in either of the cases, during the pendency of his suit, to serve a copy of his declaration on the lessors of the plaintiff or his attorney in the other case or cases, with a notice of the pendency of his action, and to require him or them to defend against the same. And in the event of a recovery by the plaintiff giving the notice, it shall not be lawful for the plaintiff notified as aforesaid, to proceed in the action for the recovery of the tenements sued for, but only for costs and damages: *Provided*, That sixty days' notice shall be given before the said plaintiff shall be required to join in the consent rule.*

26. Whenever a recovery has been had in any action of ejectment, and there has been, and then is, pending, an action for the recovery of the same tenements, which action was commenced before the recovery of the lessors of the plaintiff in the former suit, it shall be lawful for the plaintiff in the suit pending, to serve a copy of his declaration upon the parties in possession, or who claim interest under the recovery as aforesaid, notifying the said parties of the pendency of the action, and requiring them to defend against the same. And the parties so notified, may defend with, or in lieu of the tenants in possession: *Provided*, That the notice hereby contemplated shall be given sixty days before the trial of the cause.*

27. After a recovery by a plaintiff in any action of ejectment as aforesaid, it shall be lawful for the circuit court to admit his lessors to defend in any action of ejectment which may be pending at the time of his recovery, upon a motion to the court for this purpose. And it is made the duty of the court to set forth in the order admit-

* Adopted by the supreme court at June term, 1842.

ting parties under either of these rules, the facts that entitle them to admission.*

Cause re-
manded not
continued as
matter of
course.

28. Where a judgment is reversed, either by the circuit or supreme court, and the cause remanded, the case shall not be continued as a *matter of course*, at the next succeeding term of the court to which it is sent back, but the party desiring a continuance shall show cause therefor, as in other cases.†

RULES FOR THE REGULATION OF THE PRACTICE IN CHANCERY.

Appearance
docket.

§ 1. THE register of each court of chancery, shall enter upon his appearance docket, every cause with the name of each complainant, and each defendant—and shall enter upon the same docket, the day on which it was filed—and the returns of the sheriff made upon the subpoenas. This docket shall be carefully preserved as a record of the court.

Subpoena to
be attached
to original
bill.
Subpoenas
how served
on infants.

2. There shall be attached to each original bill a subpoena, upon which the register shall enter copies of all the returns made by the sheriff.

3. Subpoenas issuing against *infant* defendants may be served upon their parents or either of them, if in life, and in case of death, upon the general guardian of such infants; and if there be none, then, if the infant is over fourteen years of age, upon the infant personally; and if under fourteen years, then upon such person as may have the maintenance and charge of such infant; and if any case, not provided for by this or some other rule, or by statute, shall occur, and proof be made before the chancellor, he may direct the mode of service, or appoint a guardian *ad litem* for such infants.

Femes covert
how made
defendants.

4. *Femes covert* may be made defendants by service of subpoena upon their husbands, if residents, or by order of publication, if non-residents; and the order of publication shall be transmitted to the husband in all cases, except where the separate estate of the wife shall be the object of the bill, in which case, the subpoena shall be served on her, and the order of publication transmitted to her.

Corporations
how made
defendants.

5. Domestic corporations shall be made defendants by a service of subpoena on the principal officer of such corporation. Foreign corporations shall be made parties by order of publication, a copy whereof shall be sent to the principal officer of the same—after the service of process in form aforesaid, it shall be lawful to enter a decree *pro confesso*, for the want of answer, or an order for a *distingas* may be obtained, to compel an answer against any domestic corporation.

Book of or-
ders, &c.
Solicitor to
draw out all
rules, orders,
or decrees
applied for.

6. The register shall keep a book in which shall be entered all rules and orders which shall be taken in vacation. The solicitor of the party applying for any *rule*, or *order*, or *decree*, shall draw the same out with care, describing the cause, the date of the application, and the notice which has been given to the adverse party; and if the decree, order, or rule shall be granted, the register shall cause

* Adopted by the supreme court at June Term, 1842.

† Adopted January Term, 1841.

‡ All the rules from 1 to 39 inclusive, were adopted by the supreme court at the January Term of 1841.

the same to be transcribed on the said book—which book shall be one of the records of the court.

7. *Rules, orders, and decrees*, may be applied for every Monday, except in those cases in which a notice to the adverse party may be necessary—which shall only be applied for on the first Monday of every month, unless a special showing be made before the register for such order, decree or rule, at a previous date: *Provided*, If the register cannot get through business on the days aforesaid, he may continue the applications from day to day until finished.

8. The register shall have power to make orders allowing the amendment of bills, to allow complainants to file supplemental bills, to revive suits by bills of revivor, to allow the examination of witnesses *de bene esse*, to allow the examination of witnesses, and to make orders for the publication of testimony. These orders shall only be made upon a notice to the adverse party, setting forth the nature of the order applied for, which shall be served upon him, or his solicitor, at least five days before the day at which the application shall be made, and a copy thereof shall be filed with the register.

9. All applications to the register for orders or decrees, when a notice is required, shall be made in writing, setting forth the grounds on which the same is required; and all orders and decrees entered before him, shall be subject to objection or correction, at the next term of the court before the chancellor.

10. A decree *pro confesso*, may be entered in vacation, for want of an answer, against a non-resident defendant, after the time for answering has expired, and after such decree the complainants may proceed to take testimony, *ex parte*.

11. In all cases a replication shall be considered as filed, unless the record shall plainly disclose that the cause is set down for a hearing on bill and answer by consent.

12. Amendments to bills and answers, shall be made on a separate piece of paper, unless the amendment be of a brief or unimportant character when it may be made by an interlineation or erasure, with ink of a different color from the body of the bill or answer; and the amendment shall be made in such a manner, that it may be ascertained in what it consists.

13. Amendments to bills shall be served upon the solicitor of the adverse party, within sixty days after the same shall be filed, or they shall be considered as waived; and the same shall be accompanied with a notice that an additional answer is required, if such is the fact, or if no answer has been filed, or the defendant shall deem an additional answer necessary, he shall have thirty days from the service to file the same, and in case of a failure to file an answer in that time, the complainant may proceed as upon a default—and may cause a decree, *pro confesso*, to be entered in the office of the register.

14. Bills, upon which injunctions shall be ordered, shall be filed, and the conditions imposed upon the complainant shall be complied with, within twenty days after the date of the *fiat*, or the order shall be inoperative.

15. When a suit survives, either in favor of any personal representative of a decedent, or against a personal representative from whom no answer is required, it shall not be necessary to file a bill of revivor, but, upon an application to the register, the party may obtain a *scire facias* in favor of, or directed to such personal representative, which being served upon the adverse parties, it shall be lawful for the register to enter an order of revival, unless cause be shown

Time of application for rules, orders, decrees, &c.

Register may make certain orders, if adverse party be served with five days' notice.

Applications for orders to be made in writing.

Decree, *pro confesso*, may be entered in vacation.

Replication.

Amendments, how made.

Amendments, when served.

Defendant may file answer in 30 days.

Bills, with injunctions, to be filed, & conditions complied with in 20 days after *fiat*.

Suits which survive.

to the contrary, by plea filed with the register within thirty days after the service of such *scire facias*.

Suits of *feme sole* not to abate by intermarriage: provided, &c

16. No suit instituted by a *feme sole*, or in which she shall be a complainant, shall abate by intermarriage: *Provided*, That, at or before the second term of the court after such intermarriage, the husband shall make himself a party—which may be done by a motion to the courts.

Orders of publication to state facts, and objects of bill

17. All orders of publication shall succinctly state the facts and objects of the bill. And whenever an injunction shall be granted, which is to operate upon a non-resident who is a party to the suit, the order of publication shall contain a recital of the matter on which the injunction is to operate, which shall be published according to the rules herein prescribed, by which non-residents are made parties to suits, and the operation of the injunction shall relate to the date of the first publication.

Cross-interrogatories.

18. Whenever a party may desire to be present at the examination of a witness called against him, he shall give notice to the adverse party by filing a notice with his cross-interrogatories, whereupon, it shall be the duty of the register to prescribe the notice which he shall receive, of the time and place of the execution of the commission.

Re examination of witnesses, when party has not filed cross-interrogatories.

19. It shall be lawful for a party against whom a witness has been called, to re-examine the same witness, provided he has not filed cross-interrogatories—and the examination of such witness, if made under this rule and be so expressed, shall operate as a cross-examination of the said witness—and both parties shall have the liberty of being present at such examination, but it shall be the duty of the party wishing to examine such witness, to give notice at the time of filing his interrogatories, that he is desirous of being present, and the register shall furnish the notice that shall be given to the adverse party, of the time, place and person, before whom the commission shall be executed.

Duty of register to order re-examination on discovery of new facts.

20. Where a party who has filed cross-interrogatories, afterwards learns, that the witness has a knowledge of facts which he did not know at the time of filing his cross-interrogatories, it shall be the duty of the register, on affidavit made setting forth these facts, to order a re-examination as in the preceding rules.

Depositions.

21. Depositions shall be sealed up with the commission, by the commissioners, with the title of the cause endorsed on the envelope, and the package shall be directed to the register at the proper place: publication of the testimony must be passed by the court or before the register, or it may be done by consent of parties in writing entered of record: after publication passed, no testimony shall be taken, except by consent or by special application to the chancellor, and allowance by him.

Bill of interpleader. Testimony.

22. The complainants to a bill of interpleader intending to take testimony, must give notice to the parties required to interplead, and if the defendants, or either of them, desire to take testimony, they must give notice to the complainants.

Testimony *de bene esse*, when and how taken.

23. Testimony, *de bene esse*, may be taken before answer filed, when the proof of a material fact depends upon the testimony of a single witness—where the witness is over sixty years of age, or where the witness is so infirm that the party fears that injury will result from delay, owing to such infirmity, or where the witness is about to remove permanently from the state. The application for a commission shall be made to the chancellor in court, or register, according to the manner heretofore provided. In other cases of emer-

gency, which shall be exhibited in the application, the register may issue a commission for the examination of such witness at any time : and after an examination of a witness *de bene esse*, the party calling him shall not be required to make a further examination, but may use the testimony so taken—the opposite party shall have the right to examine such witness.

24. If an infant defendant reside out of the chancery district, the court of chancery may issue a commission to cause a guardian to be assigned, and to have his answer taken; and in case no application is made to the court for the appointment of a guardian by the infant, parent, guardian or person, in whose control the infant is shown to be at the first term after service, it shall be lawful for the chancellor to cause some competent person to be appointed—provided, that no decree shall be rendered at the term at which such appointment shall have been made, and that another guardian may be appointed at or before the second term, upon application to the chancellor, and on a proper showing. Where an infant defendant is a non-resident, the court shall have power to appoint a suitable person, residing in this state, guardian *ad litem*, after proof of the infancy of the defendant, his or her non-residence, and that publication has been duly made.

How to proceed when infant defendant resides out of district.

Or is a non-resident.

25. In mortgage suits, it shall be sufficient to bring in subsequent incumbrances to state that they claim some interest in the subject of the bill, and to pray for a subpoena to them : and the court shall have power to decree a sale and direct the proceeds to be brought into court without adjusting the priorities between such parties ; unless there be some equity shown which makes it necessary—and any person whether a party to the suit or otherwise, shall have the liberty to present his claim by petition to the court for the proceeds of the sale before distribution.

In mortgage suits incumbrances &c.

26. If it shall be discovered that there are subsequent incumbrancers, or parties in interest, not made parties to the cause, at any time before confirmation of the sale, in any mortgage suit, the complainant or purchaser shall have liberty to bring them before the court at that stage of the proceedings, and if they make no opposition by answer, their interest may be foreclosed, without a re-sale of the property.

Rights of subsequent incumbrancers.

27. An injunction to stay proceedings at law, either before or after judgment, shall in no case issue, until bond and security have been given in such sum, and with such condition as the chancellor or judge may direct ; on awarding an injunction for any other purpose, it shall be in the discretion of the chancellor or judge to require security.

Injunctions when issued

28. If the complainant shall not, before the second term after filing his bill, have taken measures to bring in the defendant, his bill shall be dismissed.

Dismissal of bill for complainant's neglect.

29. Where a defendant resides out of the state, on the application of his solicitor, the register shall issue a commission directed to one or more persons, to take and certify his answer—the affidavit to the answer shall be attached thereto, sworn to and subscribed by the defendant, before such commissioners, or one of them, and so certified by him or them. Where an affidavit to the bill or petition of a party residing out of the state is necessary, it may be taken and certified in like manner. The answer of a foreign corporation, taken according to law, may be certified by commissioners appointed in like manner.

Answers of non-resident defendants and foreign corporations.

- Demurrers.** 30. All demurrers shall state the matters of objection to the bill. If a demurrer be overruled, the defendant shall forthwith put in a full and sufficient answer.
- Bill dismissed or injunction dissolved for want of equity.** 31. A defendant may at any time move to dismiss a bill or dissolve an injunction for want of equity. When exceptions to an answer for insufficiency have been filed and disallowed, the injunction shall thereby be dissolved without motion or further argument.
- Costs, by whom paid.** 32. The unsuccessful party in a demurrer to a bill, exceptions to an answer, motion to dismiss a bill, or to dissolve an injunction, shall pay the costs thereof, unless the court shall otherwise order.
- Proceedings where complainant or defendant fail to appear** 33. When a cause is called for hearing, if the complainant does not appear, it shall be dismissed; if he appear, and the defendant does not, it shall be heard, and a decree rendered according to the claim and proof. Either party, on timely application, may set aside his default, on such terms as the court shall impose.
- Complainant's counsel to furnish brief.** 34. At the hearing of every cause, the complainant's counsel shall furnish to the court, a brief, containing a succinct statement of the material facts stated in the bill, answer, exhibits, and testimony, the points raised and the authorities on which he intends to rely; if he fail to furnish such brief, he shall not be heard in argument.
- Bill of review.** 35. A final decree shall be called in question, before the court rendering it, by bill of review; and shall never be impeached by original bill, unless on the ground of fraud.
- Suit at law and bill in chancery for same claim or demand.** 36. Where a suit at law, and a bill in chancery are instituted for the same claim or demand, the defendant, on suggestion, supported by affidavit, may move the court to inspect the records, and if it appear that the two suits are for one and the same cause of action, it shall be ordered that the plaintiff elect in which he will proceed, and that he dismiss the other.
- Sessions of register where held.** 37. The sessions of the register as master in chancery, shall be held at his office, unless by consent of parties, he appoint a different place.
- Exceptions to testimony.** 38. Exceptions to testimony admitted by the register, must be taken before him, and certified in his report; if not so taken the exception is waived.
- Sales.** 39. The register shall conduct all sales, made under decree of the court, unless the decree otherwise direct, and the court shall fix his compensation therefor.
- Order against non-resident defendants, when made, published, &c.** * 40. Where a bill charges that a defendant thereto resides out of this state, if the complainant, or other credible person, make affidavit in writing before the register or a justice of the peace, that such defendant is, as he believes, a non-resident, stating the place where such defendant resides, and that he is of the age of twenty-one years, or, if the defendant's residence is not known to the person making affidavit, state therein that the same is unknown: or, if the bill sets forth the facts required to be stated in said affidavit, and is sworn to, it shall be the duty of the register to make an order against such non-resident defendant, requiring him, her, or them, to answer or demur to said bill within such time as he may prescribe therein, not less than sixty nor more than ninety days from the making thereof. Orders of publication as to non-resident defendants, made by the court during its sitting, shall, as to the time required to answer, be governed by this rule. The register shall have all orders of publica-

* All the rules from 40 to 51, except rule 50, were adopted by supreme court at the June Term, 1842.

tion against non-resident defendants, whether made by the chancellor or himself, published, with as little delay as may be, in such newspaper as may be designated in the order, once a week for four consecutive weeks; a copy of which order he shall post up, at the door of the court-house of the county where the court sits, and send by mail another copy thereof to the defendant, where his residence is shown by the bill or affidavit as aforesaid, which copies shall be posted up, and sent by the mail, within forty days from the making of said order.

41. Infants residing beyond the limits of this state, may be made parties defendants, by publication, according to the foregoing rule; but a copy of the order of publication, instead of being sent to the infant, shall be sent to the persons designated in the fourth rule, for the regulation of chancery practice, adopted at January term, 1841, in the order therein mentioned. On the expiration of the time required to answer in the order of publication, the register in vacation, or chancellor in term time, may appoint a guardian *ad litem*, for the infant defendant. A guardian *ad litem* shall not be required to answer in less than thirty days after his appointment, except in the case provided for in the rule next following. If a guardian *ad litem* fail to answer the bill, for more than thirty days after his appointment, the register shall file a formal answer in the name of said guardian, denying all the allegations of the bill. No one shall be appointed a guardian *ad litem*, unless he previously consent thereto in writing.

Non-resident infants, how made parties.

Chancellor or register may appoint guardian *ad litem*—if he consent in writing, &c.

42. If an infant defendant of fourteen years of age, is served with subpoena to answer, and fails to name a guardian *ad litem*, within thirty days thereafter, the register in vacation, or chancellor in term time, shall appoint such guardian, who may be superseded by the infant appearing, either before the register in vacation or chancellor in term time, and making choice of another, or having such choice certified by a justice of the peace, to the court or register, and on the guardian *ad litem*, if necessary, forthwith putting in an answer for the infant.

Infant defendant of 14 years, failing to name guardian *ad litem*, register or chancellor may appoint such—to be superseded if infant appear, &c.

43. Commissions to take testimony shall be issued by the register, directed to one or more persons to execute, and shall be issued at any time after ten days' service of the interrogatories in chief, on the adverse party or his solicitor, who shall file cross-interrogatories within the ten days. The party filing the interrogatories in chief, if cross-interrogatories be filed, may file rebutting interrogatories thereto, at any time before the issuance of the commission. The original interrogatories, as well as those in chief, cross and rebutting, (if any) or copies shall accompany the commission, which commission shall contain the usual authority to the commissioner or commissioners, and be executed in the usual manner of taking depositions or interrogatories, without enjoining secrecy on the part of the commissioner or witness, or requiring a private examination. Objection may be made to the rebutting interrogatories, after the publication of the testimony; or to the cross-interrogatories, if it appear that there was no opportunity of making it before the commission issued.

Commissions to take testimony when issued, &c.

44. The testimony of witnesses may be impeached by deposition taken according to the foregoing rule, without filing articles of impeachment.

Testimony, how impeached.

45. In filing supplemental bills and bills of revivor, it shall not be necessary to recite therein any part of the original bill, or any other subsequent part of the proceedings; but in supplemental bills, it shall be sufficient to refer to the original and state the new matter;

In supplemental bills, and bills of revivor not necessary

to rectify any and in bills of revivor, the cause requiring a revivor with the appropriate prayer and conclusion.

Subpœnas on supplemental bills and bills of revivor.

46. Subpœnas on supplemental bills and bills of revivor, shall be returnable to a day certain, not less than thirty days from the time of their issuance, and, on their being executed thirty days, the register in vacation, or chancellor in term time, may, if a supplemental bill be not answered, order the same to be taken *pro confesso*, subject to be set aside on filing a sufficient answer; or, if a bill of revivor, order the suit to stand revived: *Provided*, No subpœna to answer a supplemental bill, or to revive, shall be returnable to a day beyond the first day of the next term; *And provided further*, That if thirty days do not intervene between the filing of the bill and the next term, the subpœna shall issue returnable to that term, and if executed five days before its commencement, the order *pro confesso*, or to revive, shall be then made; unless good cause shall be shown to the contrary.

Orders of publication on supplemental bills and bills of revivor.

47. Orders of publication against non-resident defendants, may be made on supplemental bills and bills of revivor, as directed in the foregoing rule number two, and rule twenty-one, adopted at January term, 1841, and after the expiration of the time required to answer or show cause, the supplemental bill may be taken *pro confesso*, or the suit revived as to such non-resident defendant.

Not necessary to deliver copy of supplemental bill or bill of revivor to defendant.

48. It shall not be necessary to deliver a copy of a supplemental bill or bill of revivor, to a defendant, on serving him with subpœna to answer the same.

If *feme sole* marry pending suit, husband, how made party to. Complainant or defendant may take writ of error to supreme court.

49. When a *feme sole* defendant marries pending a suit, upon a suggestion in writing setting forth that fact, her husband may be made a party by service of subpœna and copy of the bill, to be issued by the register in vacation, or, in the term time, by the chancellor on motion.

50. Whenever a plaintiff or defendant in a cause in chancery is dissatisfied with the decree therein rendered, such person may sue out a writ of error in the name of himself and his co-plaintiff, returnable to the supreme court; and the plaintiff in error may sever in the assignment of errors, or any one or more of them may assign errors, and the cause proceed to judgment without the necessity of a summons and severance, as to the plaintiffs who do not join in the assignment; and the plaintiffs, who have not caused the writ of error to be sued out, or in any manner aided in the prosecution of the cause in the supreme court, shall not be taxed with the costs here accruing.*

Rules of English chancery court.

51. The rules of the English court of chancery, not inconsistent with the statutes of this state, and the rules and decisions of this court, so far as consistent with the institutions of this country, are hereby adopted as rules of practice in courts of chancery in this state.

* Adopted January term, 1841.

NO. II.

AUTHENTICATION OF THE ACTS, RECORDS, AND JUDICIAL PROCEEDINGS OF THE OTHER STATES, &c.

Constitution of the United States. Article iv. Section 1.

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records and proceedings, shall be proved, and the effect thereof.

Act of Congress, of May 26th, 1790.

"To prescribe the mode in which the public acts, records, and judicial proceedings, in each state, shall be authenticated, so as to take effect in every other state."

SEC. 1. The acts of the legislatures of the several states shall be authenticated, by having the seal of their respective states affixed thereto: the records and judicial proceedings of the courts of any state, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, (as the case may be,) that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have, by law or usage, in the courts of the state from whence the said records are or shall be taken.

Act of Congress, of April 27, 1804.

"Supplementary to the act, entitled 'An Act to prescribe the mode,' &c.
[The act of May 26th, 1790. *Supra.*]

SEC. 1. From and after the passage of this act, all records and exemplifications of office books, which are or may be kept in any public office, of any state, not appertaining to a court, shall be proved or admitted in any other court or office in any other state, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county or district, (as the case may be,) in which such office is or may be kept; or of the governor, the secretary of state, the chancellor or the keeper of the great seal of the state, that the said attestation is in due form, and by the proper officer; and the said certificate, if given by the presiding justice of a court, shall be further authenticated by the clerk or pro-

¹ See "Judicial Proceedings at Common Law,"—§ 159, page 341.

thonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate be given by the governor, the secretary of state, the chancellor or keeper of the great seal, it shall be under the great seal of the state in which the said certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have, by law or usage, in the courts or offices of the state from whence the same are or shall be taken.

SEC. 2. All the provisions of this act, and the act to which this is a supplement, shall apply as well to the public acts, records, office books, judicial proceedings, courts and offices of the respective territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts, records, office-books, judicial proceedings, courts and offices of the several states.

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- Proceedings to compel production of a will, . . . 304 § 36
- Validity of a will, how tried, . . . 304 § 35. 363 § 6
- Widow may dissent from will and claim her dower, . . . 172 § 1
- Debtor appointed executor, no extinguishment of the debt, unless so directed in the will, . . . 228 § 35
- Every person twenty-one years of age, and of sound mind, may devise lands by will, . . . 596 § 1
- Will must be signed by testator, or by some one in his presence and by his request, and attested by three or more witnesses, . . . 597 *ib.*
- Nuncupative wills, how regulated, . . . *ib.* § 2
- Not to be proved until fourteen days after testator's decease, nor without citation to the widow or person principally concerned, . . . *ib.* § 3
- Not to be proved after six months, unless reduced to writing, in six days after made, or altered, . . . *ib.* § 4
- Written wills not to be revoked by nuncupative, unless in case of soldiers or seamen in service, . . . *ib.* § 5
- Posthumous children not provided for by will, to share the estate as in case of intestacy, . . . *ib.* § 6
- Estate not bequeathed, to be administered by executor, and distributed as in case of intestacy, . . . *ib.* § 7
- If subscribing witness be a devisee, and his testimony is necessary to establish the will, devise shall be void, . . . *ib.* § 8
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WILLS, PROBATE OF—*Continued.*

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- By justices of the peace, 360 § 11
- On appeals, justices may summon witnesses to attend court, 314 § 9. 360 § 11
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- Clerk issuing *certiorari* shall subpoena witnesses on request of either party, 315 § 15
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- Failing to attend, to forfeit one hundred dollars, and be liable to an action for damages, *ib.* § 2
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